the Freeman

Ideas on Liberty

SEPTEMBER 1968

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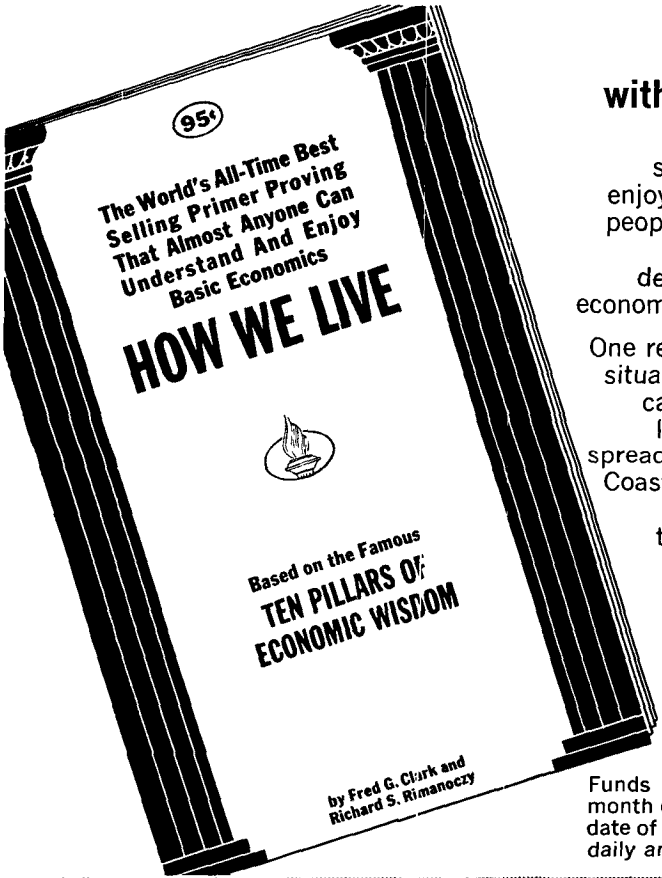
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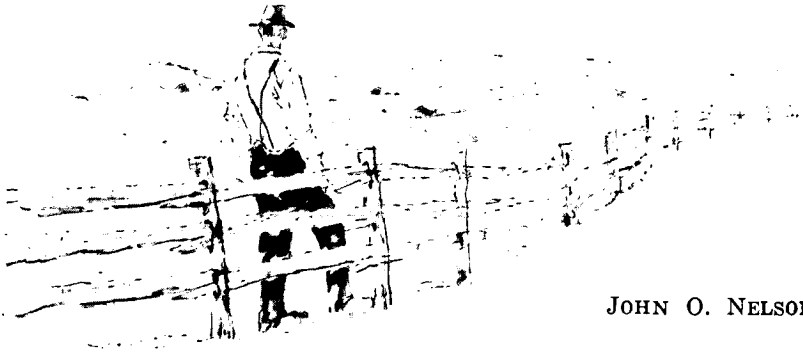

JOHN O. NELSON

MISREPRESENTATIONS OF CAPITALISM

PROPONENTS of laissez-faire capitalism find, like Socrates, that their most implacable and influential accuser is nameless: a great and almost infinite mass of historical distortion. This distortion takes two forms. One consists in the presentation of what never was fact as historical fact. A case in point would be the mephitic butchering practices depicted in Upton Sinclair's *The Jungle* and in the multitudinous accounts of the meat-packing industry that trace their lineage to that libelous figment of Mr. Sinclair's imagination. The other form consists in presenting as fact what was fact, but putting upon the facts an interpretation that entirely discolors them. In certain respects, this last method of denigrating laissez-faire capitalism is more persuasive, as it is more common, than the first. Plain misstatement of fact can be easily hit and exploded. Colored interpretations of fact offer a tougher target, off which even well-directed fire can glance harmlessly.

In this essay, I shall concentrate upon the last form of distortion. Although helpful, general considerations and arguments cannot disarm these distortions. Like the repressions in hysteria, they must

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be disarmed by concrete exposure — one by one. This is slow work, but there is no substitute for it.

So, let us begin with a recent article in that popular but prestigious emporium of the American Past, the magazine, *American Heritage*. The article, "The King of the Ranchers,"[1] is a description by Bernard Taper of the life and career of the cattle-raiser, Henry Miller.

Distorting the Picture

By interpreting in emotively denigrating terms various facts of Miller's life and activities which seem *prima facie* praiseworthy, and which by libertarian standards are praiseworthy, Taper manages to produce a picture of the laissez-faire capitalism of the American Past that depicts it as something distasteful, even immoral, and deservedly displaced. The analogy that comes to mind is of a person who holds up to a gleaming white snow-scape a red-colored pane of glass and, beckoning us to look through the glass, then tries to convince us how ghastly and bloody the snow is. But let me now substantiate this claim in detail. I shall use for my witnesses Taper's own statements of fact.

We learn from Taper that Miller was born in 1827 "in the little town of Brackenheim in Württemberg, Germany," the son of a butcher. He was apprenticed to the trade at eight and at fourteen he ran away to the United States. Nine years later, when 22, he made his way to the gold-booming California of 1850 with six dollars in his pocket. When he died in California in 1916, his "estate was appraised at forty million dollars, a sizable increase [Taper notes] over the six dollars he had started with. . . ." This estate consisted almost entirely in farm and cattle-land and cattle.

In summary, then, Miller, a German immigrant without friends or fortune, came as a very young man to this country and after a few years, with six dollars in his pocket, arrived in California, where he died 66 years later leaving an estate in cattle-land and cattle worth forty million dollars. In the older tradition of Horatio Alger, we should want to praise this progress from rags to riches and think of it as exemplifying the rewards of virtue, hard work, invention, and thrift. How does Taper refer to it? He quotes from Carey McWilliams' tendentious work, *Factories in the Field*, to the following effect: "His [Miller's] career is almost without parallel in the history of land

[1] Bernard Taper, "The King of the Ranchers," *American Heritage*, August, 1967.

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monopolization in America. He must be considered as a member of the great brotherhood of buccaneers: the Goulds, the Harrimans, the Astors, the Vanderbilts." In this quotation Taper clearly intends to be presenting his own interpretation of Miller. Thus, he, too, wants to convince us that Miller was a "land monopolist" and a "buccaneer."

How Big Is a Monopoly?

In dissecting this harsh accusation we might pause first over the epithet "land monopolization." Now what can *land monopolization* by a private individual consist in? If one owns a certain amount of land in his own name, is he a land monopolist? If, then, I own in my own name a half-acre lot in suburbia, am I a land monopolist? Predictably, neither McWilliams nor Taper means *that*. But by the same token, if I owned one thousand acres or a million acres, I should not for that reason alone be a land monopolist.

What could an individual possibly be taken to mean if he said, "I have a monopoly on land"? Surely, he could only mean that he had some kind of exclusive control of the ownership of land. Thus, if uttering such a remark in the United States, he would have to mean either that he owned all the land in the United States or that he had some sort of charter that gave him exclusive control over the ownership of land in the United States. Plainly, Miller was as far as Taper himself from falling into either category; for, as we have seen, ownership of *some* land (as opposed to all land) does not make one a land monopolist.

Actually, it is inconceivable that any private individual could be a land monopolist. This sort of monopoly, like most others, would have to reside in the State, and typically it has. In the face of such obvious discrepancy with fact and theory, what then can be the point of McWilliams' and Taper's description of Miller as a land monopolist? We can think of only one possible answer. In the "Brave New World" laboratories of Marx and his latter-day followers, the term "monopoly" has been given a sense denoting demons and demonocracy and, just as unfairly, has been reserved for private individuals and private business (instead of government where its older and true application lay). Whatever McWilliams' and Taper's conscious intention may have been, therefore, in calling Miller a land monopolist, the point is made that Miller and his activities were somehow diabolical. By obvious implication, the virtues and ideals of laissez-faire capitalism are also sullied.

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Pirate Without Portfolio

Do we find any closer fit of phrase and fact in the description of Henry Miller as a "buccaneer"? According to Webster's dictionary, a buccaneer is "a pirate; esp. one of the freebooters preying upon early Spanish-American vessels and settlements in the 17th and 18th century." Since Miller lived in the nineteenth and twentieth centuries and had only a brief and nodding acquaintance with the sea, we must assume that Taper and his authority, McWilliams, are here being purely fanciful. Presumably, what they mean, if they mean anything factual, is that Miller obtained his wealth and possessions through robbery of one sort or another. Let us see then what facts Taper adduces for this serious charge.

Four paragraphs following his stigmatization of Miller as a buccaneer, Taper describes in specific detail Miller's general outlook and methods. We find that Miller abjured easy and capricious ways of making a fortune for sheer hard work, industry, honesty, and thrift. Taper tells us:

> From the beginning, the gold mines had no lure for Miller. He was as fully certain as the miners that the West was the land of opportunity, but he expected to have to work hard for his reward, not to have it handed to him as a pile of nuggets. He became a butcher's assistant, laboring early and late seven days a week and indulging in none of the pleasures of what was then the most riotous, fun-loving city in the country. A contemporary gives us a telling glimpse of young Miller at the start of his career in 1850. The writer was wending his way home at dawn after a night of carousing and passed Miller on the street. Miller was on his way to open the butcher shop. He was bent over, carrying on his shoulders a calf he had slaughtered an hour earlier in the stockade at the other end of town.

Are we reminded by this description of anything resembling robbery? I trust that we are not. Does the fact that Miller worked and saved while much of San Francisco caroused suggest piracy? Surely, it does not.

Taper several times refers to Miller's foresight, organizing genius, and consummate knowledge of the cattle business. According to Taper, Miller had "a fabulous memory, brilliant organizing power, and a fanatic devotion to work." He rode day and night supervising his vast holdings and herds, composing meanwhile an almost endless stream of insightful and knowledgeable memoranda covering an amazing variety of details and topics:

> As Miller travelled there used to emanate from him a steady stream

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of letters to the various supervisors, agents, foremen, and other satraps (sic) of his business empire. Written on cheap ruled paper at any opportune moment of the day – before sunup, late at night, during pauses on the dusty roads and trails – Miller's letters contained advice and instructions on the most minute details of his far-flung operations: how to make use of cow chips as fuel to run the farm machinery, what to do about anthrax and blackleg, the advantages of opening haystacks at the south side, Miller's displeasure at finding canned milk served in his hotel in the heart of the dairy country, the importance of rubbing salt over a hide to keep it from shrivelling, etc. . . A good many of the thousands of letters of instruction he wrote have been preserved, and they are quite remarkable documents, constituting something of a comprehensive manual of cattle raising.

To judge from this presentation of fact Miller was not only a hardworking and prudent businessman but an imaginative and scientific one also. And this impression is borne out by some later remarks of Taper's. Consider these statements:

He [Miller] affected the development of the Far West, particularly of California, in a number of unique and significant ways. He put the business of raising livestock onto a systematic basis for the first time. He developed a breed of cattle particularly suited to the West – a mixture of Hereford, Devon, and Durham – and improved the breeds of sheep. He has been credited with being one of the first agriculturists in California to experiment with the strange new crop called alfalfa, and he was among the first to plant cotton and rice, both now staples of the state's agriculture.

Of even more far-reaching consequence were his reclamation and irrigation projects . . . Miller was also the first to do something practical on a large scale to assure a constant water supply – he built thousands of miles of levees and irrigation ditches, three major canals with a total length of 190 miles (!), and a 350-foot dam across the San Joaquin River. It is estimated that he thereby made fertile over 150,000 acres of near-desert land.

Land Acquisition

To almost anyone of uncorrupted mind and feelings, this account of Miller would seem to picture, not a malefactor and robber of men, but a creative genius of the highest order and a benefactor of both his own generation and subsequent generations. We therefore repeat: what possibly can Taper and McWilliams mean *factually* by calling Miller a buccaneer or robber? Did Miller perhaps steal his land holdings and cattle from other men? This does not seem to be true either.

The first land Miller owned was

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purchased in 1863 with some ten thousand dollars he had saved from working (as we have seen) in a butcher's shop and then operating one himself in San Francisco. As far as one can tell from Taper's article, whatever land Miller acquired from individuals or the government, he acquired by purchase or other legal means. He forced no one to sell land to him, an innuendo of Taper's to the contrary notwithstanding. Says Taper:

> Like many of his contemporary titans of private enterprise, Miller had few scruples to deter him in his quest for gain. One of his methods of acquiring land was to buy out one or more of the heirs to a Spanish land grant. This would give him grazing rights over the whole ranch and before long he would so dominate the land that the other heirs would sell out to him at a nominal price.

"Facts that Can't Stand Close Examination"

Let us examine this colored version of Miller's "method" more narrowly. Miller would buy out one or more of the heirs of a Spanish land grant. There is nothing unscrupulous in that! "This would give him grazing rights over the whole ranch and before long he would so dominate the land that the other heirs would sell out to him at a nominal price," adds Taper. But unless greatly enlarged upon and those enlargements substantiated in all sorts of detail, this blanket indictment carries no weight whatsoever. It does not even make much sense. Buying out one heir would not give Miller sole grazing rights over a ranch if there were other heirs. He would possess just so much right as his portion of the estate entitled him to. Had he purchased a controlling interest? Then, of course, he "dominated" the ranch, but what would one expect? If the other heirs possessed the controlling interest, they and not Miller would "dominate" the ranch. Did the heirs to Spanish grants really sell out to Miller at "nominal prices"? What were the exact circumstances if they did? Was the land unimproved and did its improvement entail a great deal of expense which they were not prepared to share with Miller? These are questions that minimum fairness would demand be answered before accusing a great and gifted man like Miller of sharp practices, and, in particular, such a seedy-looking practice as "so dominating the land" that heirs to Spanish grants were forced "to sell out at a nominal price." From what we learn elsewhere about Miller's abilities and achievements, he

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neither did engage in sharp practices in order to obtain business success nor did he have to.

But, again, Taper tells us with testy indignation that Miller "also engaged in the practice of making extensive loans on farm properties and then foreclosing on the mortgages." Let us suppose this were so. Miller forced no one to accept the loans in question. On the contrary, one can imagine that those who received the loans would have been outraged had Taper raced up during one of the said transactions and cried, "You dare not – you cannot – borrow this money from Miller!" Did Miller foreclose on unpaid loans on farm properties? Suppose he did. How could one possibly remain solvent if he did not? Does the government waive foreclosure when not paid on loans to it or when its coercive tax-levies are not paid? But even Taper's imputation that Miller avariciously foreclosed on farm mortgages whenever he could and indeed loaned money on farms just in order to be able to foreclose on them is invalidated by his own subsequent testimony. For soon afterwards he tells us that "one day during the depression of the nineties he [Miller] called everybody in the region who owed him money and gave back all their IOU's. 'It's time for a clean start,' he said gruffly, wiping $350,000 off his books." Let us put this fact in the scales against the charge, for whatever weight it has, that Miller loaned money to farmers simply in order to foreclose on them and gain possession of their lands. Here was his supreme opportunity, and he did the very opposite from what the charge predicates. Surely, therefore, the charge in question weighs out as mere vilification.

Stolen Cattle

Can it be maintained, perhaps, that though Miller did not rob others of their land, he robbed them of their cattle and for this reason deserves the appelation, "buccaneer"? Once more the facts rise in opposition. What we learn is that – far from robbing others of cattle – Miller was the constant target of such robbery and that, moreover, the government courts, instead of protecting Miller from this robbery, condoned and abetted it. We read:

> Miller's attitude toward those who attempted to rob him was realistic. He knew that he was a natural target and that it was a rare jury that would bring in a conviction against a person accused of stealing from the man who owned more livestock and land than any person in America. In one case a defendant was acquitted after being caught

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red-handed. After the trial he said reproachfully to one of Miller's superintendents, "I'm surprised at Mr. Miller. He ought to be a better businessman than to prosecute me. It cost me a thousand dollars to bribe that jury. Look at all the cattle I'm going to have to steal now to get that back."

We are tempted to exclaim: Mr. Taper, these are the facts by your own admission! Look at them for heaven's sake! Now who were the buccaneers? Indeed, except for just Henry Miller, who was not!

Taper is not satisfied with calling Miller a "buccaneer"; he calls him a "grasping, dominating, humorless man." These ugly traits are evidently supposed to lie behind and explain Miller's being a buccaneer or, what seems to come to the same thing in Taper's Lexicon, a successful businessman. A successful entrepreneur just has to be grasping, dominating, and humorless! What truth is there in this first article of the anticapitalist's creed? Once more we shall let Taper's own statements be our witnesses.

Acts of Benevolence

Let us take the accusation that Miller was grasping. We have already cited the instance of his returning $350,000 worth of IOU's in the depression of the nineties. This act of benevolence, we discover, was merely one of a great many. For example, Miller "was apt to leave a twenty-dollar gold piece in one of his boots as a tip for the maid who shined them" — a queer form of graspingness, one must say! Or consider these policies of Miller's as set down by Taper:

> [Miller] never prosecuted anyone — settlers or bandits — who killed his cattle for food. Miller asked only that whoever killed any of his steers should hang the hides on a tree where Miller's cowboys could find them. Hides, after all, were worth four dollars apiece. It was surprising how often even bandits took the trouble to comply with this request.
>
> He let it be widely known that any settler should feel free to pick up a Miller cow on the range and take her home as a milk cow for the family, provided the settler saw to it that the unweaned calves did not suffer.
>
> Miller had a long list of people to whom he regularly sent gifts, and he knew better than to try to stint or economize here. "There's no use giving a person a turkey and expecting him to appreciate it unless it is in fine condition," Miller once said to a penny-pinching foreman. "It's better not to send a gift at all."
>
> Miller's prudently calculated generosity extended to tramps and other vagrants, to whom he gave several thousand free meals a year.

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Humorless?

Taper's charge that Miller was humorless – and certainly that is a charge of which, for all we know, Taper himself might be guilty – is not so easy to counter. What strikes one person as humor is apt to strike another as not humor. For my own part, I detect wry humor in Miller's instruction for "the care of hoboes":

> Never make a tramp work for his meal. He won't thank you if you do. Anyhow he is too weak to work before a meal and too lazy to work after a meal.

I detect a twinkle of humor in Miller's leaving twenty-dollar gold pieces in his boots for the maids who shined them. But suppose Miller lacked any sense of humor: how uncharitable to bring this fact up against Miller as if enumerating the counts of an indictment: grasping, dominating, humorless!

In a widely read and admired journal devoted to the history of this country, then, we find a great entrepreneur of our recent past described as a "buccaneer" and, given the harshest intonation, "grasping." Our vision being colored by these interpretations, we are apt to think that we are reading an account of some unmitigated thief and scoundrel. When we look hard at the facts provided us, we find instead that the person being described was in reality intelligent, industrious, imaginative, saving, prudently generous, and completely honest, and that his immense success in business stemmed from these virtues and from a corresponding lack of vice.

Destroying the Founders Denies Our Heritage

I have gone to these lengths to demonstrate the distortion and deception that have been practiced in Taper's article for reasons that are not negligible. Taper's distortion and deception are not isolated. They are representative of the treatment accorded for many years now and still accorded to the great geniuses of this country's laissez-faire past. In so denigrating these men, historians and economists have also blackened the virtues and achievements of such persons. In doing this, they have made it seem that one ought to be ashamed of the very traits, persons, and achievements that in another time it was perceived one should rightly be proud of. The tragic upshot of this denigration of laissez-faire history, achievement, and virtues is that the present generation, taken in by the deception, finds itself emulating, not the true heroes of civilization like Miller, but the constant oppressors of mankind, the Castros, Mao-tse-

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tungs, and Lenins. One hardly needs to point to the already terrible devastation of mind, morality, spirit, and material well-being that this subversion of truth and history has produced in America. In less than two generations, "the land of the free and the brave" has become the limbo of the coerced and the fearful; the land of opportunity, the limbo of despair; the land of the beautiful, the limbo of the ugly.

Taper, McWilliams, and their fellow anticapitalists, while pointing at the Millers and Carnegies of our past and shouting "robber," have themselves engaged in the most frightening robbery of all: first, robbing great men of reputations fairly won and the gratitude that we owe them; and second, in doing so, robbing us of a rich heritage. It is important that what has been taken from us by deception be taken back by force of fact and demonstration.

The country's great past and its great men – the Fords, Rockefellers, Vanderbilts, Astors, Millers, Jim Hills – have been buried under a mountain of muckraking innuendo, misrepresentation, and outright libel. Our future lies buried under this same mountain of collectivist refuse. One of the major tasks of the libertarian scholar – perhaps the first of his tasks – is to remove this kitchen midden of hatred and envy that obscures the past greatness of America and so retrieve the visible foundations of a right civilization and right philosophy. ◈

Failure of Politics

GEORGE HAGEDORN

Mr. Hagedorn is Economist and Vice-President of the National Association of Manufacturers. This article is from his column in *NAM Reports*, June 24, 1968.

PROSPERITY is another name for abundance. A nation can have an abundance of goods and services only if it produces an abundance of goods and services. It can produce an abundance of goods and services only if it is organized in such a way as to release the energies, initiative, and skills of such of its citizens as possess those qualities.

Unfortunately energy, initiative, and skill are not distributed

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evenly among all the groups in any society. They are not evenly distributed among the nations of the world. It is likely that the differences are not so much genetic as they are cultural. But in any case the disparities exist and they are wide.

This gives rise to a feeling – it is a world-wide phenomenon – that where abundance is lacking it is because the group affected is (or has been) exploited by someone else. The road to prosperity for all is to suppress the exploiters by political action, rather than to provide goods and services by productive action.

This is the prevailing sentiment in most of the undeveloped nations of the world. It is the chief barrier to their development into prosperous members of the family of nations. It is a rising sentiment in many of the industrial nations and is the chief threat to their continued prosperity.

Case histories are abundant. In Bolivia a revolutionary government nationalizes the tin mines. What had been the chief national asset under private ownership becomes, under government control, an inefficient and wasteful operation. An enormous influx of foreign aid from the U.S. is thrown down the drain in subsidizing socialistic government enterprises or corrupt government officials.

The story is much the same in other parts of Latin America, in Indonesia, and in many of the new nations of Africa. For reasons which should, but don't, embarrass the governmental leaders, the departure of the "exploiters" produced more widespread poverty rather than the promised universal prosperity.

There is a small number of nations which illustrate the opposite side of the coin. Hong Kong and Malaysia have encouraged private enterprise. Their prosperity and productivity shine out from an otherwise dismal picture in the less developed world.

At the same time we see some of the advanced nations going the other way. In France a large segment of the working population, animated by revolutionary fervor, has decided to give itself pay raises of 10 per cent to 15 per cent, together with longer vacations. It is truly astonishing to see the illusion, in an intelligent and sophisticated nation, that everybody's welfare will be improved by higher pay for less work.

In the U. S. the belief that poverty is the result of robbery by an exploiting class has not yet become the dominant mode of thinking. But it is making progress. In certain circles the middle class is more likely to be despised for

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its "affluence" rather than admired for the productivity which made that affluence possible. Henceforth, it is urged, we must work to eliminate poverty through redistributive political action rather than through productive action in the mill and market place. At least this is what many of the programs advocated to eliminate poverty – a higher level of government social action supported by higher taxation, or a negative income tax – seem to come down to.

The spirit of enterprise among Americans – that willingness to invest one's own sweat and resources in opportunities one finds for oneself – is a tough bird and will be hard to kill. But it can be seriously crippled both by verbal abuse and by higher levels of taxation. Worse, it can be misdirected, by government intervention, into unproductive or counterproductive channels. And those who don't share the spirit of enterprise will suffer along with those who do.

Individuals who are resourceful by nature will usually make out in any kind of society. In a free enterprise society, persons who combine native resourcefulness with high ability will often rise to the top, by activities which benefit everyone else. In a society where economic decisions are made by a political power struggle, the natively resourceful (whether genuinely able or not) will take prominent parts in that struggle. But their efforts are unlikely to contribute anything positive to the welfare of their fellow citizens.

A society which rewards its participants in proportion to their contribution to the production of goods and services other people want is, on the record, the most effective in reducing the prevalence of poverty. All this is elementary in principle and abundantly illustrated in practice. We can only express astonishment that it has become the fashion in intellectual circles to ignore it. It is as though we were to agree that, since the fact that grass is green is an old and trite truth rather than a fresh new one, we will henceforth believe that grass is red.

Raising taxes on the productive groups in society in order to expand antipoverty programs isn't essentially different from expropriating the owners of tin mines in order to make the Bolivian populace richer. And it isn't likely to be any more successful. ◈

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Life Begins at SEVENTY

LEONARD E. READ

POPULAR EXPRESSION has it that "life begins at forty," thirty years ahead of my suggested figure. But life really begins each moment one grows in awareness, perception, consciousness; that is, the budding process is a continuous beginning. The moons that have come and gone do not necessarily measure growth or its ending; now and then life flags in the teens; on occasion it accelerates in the nineties. If seventy seems less likely than forty for a new beginning, the reason is that so many have died on the vine in that interval.

Glory to the man who can truthfully attest, "Life begins at ninety!"

Twenty years ago – at the age of fifty – I discovered this: "The normal human brain always contains a greater store of neuroblasts than can possibly develop into neurons during the span of life, and the potentialities of the human cortex are never fully realized. There is a surplus and, depending upon physical factors, education, environment, and *conscious effort,* more or less of the initial store of neuroblasts will develop into mature, functioning neurons. The development of the more plastic and newer tissue of the brain depends to a large extent upon the conscious efforts made by the individual. There is every reason to assume that development of cortical functions is promoted by mental activity and that continued mental activity is an important factor in the retention of cortical plasticity into late life. Goethe . . . [and others] are among the numerous examples of men whose creative mental activities extended into the years associated with physical decline. . . . There also seem sufficient grounds

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for the assumption that *habitual disuse of these highest centers results in atrophy or at least brings about a certain mental decline.*"[1]

And now, on rereading Ortega, I find: "As one advances in life, one realizes more and more that the majority of men – and of women – are incapable of any other effort than that strictly imposed on them as a reaction to external compulsion. And for that reason, the few individuals we have come across who are capable of a spontaneous and joyous effort stand out isolated, monumentalized, so to speak, in our experience. These are the select men, the nobles, the only ones who are active and not merely reactive, for whom life is a perpetual striving, an incessant course of training."[2]

Enter into Life

There is more to the observation of these two scholars – a biochemist and a philosopher – than first meets the eye. A worthy ambition, they quite correctly imply, is "to die with your boots on" or "go down with your colors flying." For what other reason are we here than to get ever deeper into life? And if there be any certain key to personal happiness, it involves the use and development of the faculties – the expanding mind being the most important and, by and large, all that remains for the elder citizen.

But there is another reason for looking so favorably on those who insist on "a perpetual striving, an incessant course of training": Each of us has a vested interest in these "select men, the nobles."[3] *We can live our own lives to the fullest only insofar as they dwell among us.* The society in which we live – the environment – is conditioned by the absence or presence of those who persistently pursue excellence. The rise and fall of society depends upon this kind of nobility. These "select men" are essential to us, and striving to be numbered among them is a worthy aspiration.

Yet, many persons lack such aspiration. Analogous is the tree with every appearance of health, its blossoms beautiful to behold, fruit developing normally toward full size. But, alas, before it ripens, the fruit falls to the ground – big and well-shaped, but useless!

We witness so many promising individuals falling by the wayside, stepping away from life, forsaking

[1] See *Fearfully and Wonderfully Made* by Renee von Eulenburg-Wiener (New York, N. Y.: The Macmillan Company, 1938), p. 310.

[2] See *Revolt of the Masses* by Ortega y Gasset (New York, N. Y.: W. W. Norton & Co., Inc., 1932), p. 71.

[3] Thomas Jefferson: "There is a natural aristocracy among men. The grounds of this are virtue and talents . . ."

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the effort essential to life's full cycle, just when the process of maturing is to begin! In a word, *the fruit of life abandoned!*

To associate old age with mature judgment is indeed a mistake, simply because, as Ortega suggests, too many elders react only to external compulsion. The inner development that is prerequisite to maturity tends to terminate too soon. Old age, more often than not, can be associated with senility. Yet, the greater the age, the richer the maturity, assuming, of course, that the budding process is alive and functioning. In these rare cases, old age and mature judgment go hand-in-hand; the older the wiser!

If I am not mistaken, freedom is to be expected only in societies distinguished by a significant number of mature and wise men. And maturity and wisdom of the quality required is reserved to those who can retain the budding phenomenon – cortical plasticity – into those years normally associated with physical decline, that is, into the period when maturing of the intellect becomes at least a possibility.[4] In any event, I am certain that the type of maturity here in question will never issue among those who, for whatever reason, permit themselves to "die on the vine." Thus, it is of the utmost importance that we reflect on the obstacles to maturity. If they can be identified, we can, hopefully, reduce them.

The Urge to Quit

The most formidable obstacle on the way to maturity is covered by the idea of *retirement!* Two forces move us toward retirement, namely, temptation and compulsion.

Many are congenitally lazy, if not physically, at least mentally. Their mental activities have stagnated, leaving them uninteresting even to themselves, let alone to others; they cannot stand their own company or abide being alone with their thoughts. They seek merriment and diversion supplied by others, like a man walking down the street with a radio glued to his ear. Any excuse, however flimsy, to avoid thinking for self! Such persons have no fruit to ripen, no mental activity to mature.

There are others who have had no thought since early adulthood

[4] Conceded, many a young person reaches a higher state of maturity than does the octogenarian. This is because some are born more highly endowed than others. However, my point is not aimed at such comparisons but, rather, at the need of maturity regardless of how high or low the endowments. Mankind loses most when those of high endowment fail to mature.

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but to "get it made." By the time that goal is achieved, abstract thought has been too long neglected for reactivation or renewal; half-hearted attempts prove unrewarding, so the temptation is to forswear any conscious effort. Mature thoughts are out of the question.

Ever so many persons of high potential look to a vocation for fame or fortune and forget to choose one in harmony with their unique capabilities. As a consequence, the job is likely to be boring; holidays and vacations – little retirements – are highlights of the seasons; and as the years pass, full retirement seems more and more attractive. There is no incentive to extend mental activity to its maturity.

Relative Retirement

The thought of retirement is anathema to me. I have not experienced any of the temptations and, thus, can list only a few of the more obvious examples. But it seems clear that there would be little drive for compulsory retirement if retirement were not a common goal. It seems to add up to this: Let's formalize and legalize that which the vast majority so ardently favor! The following examples of compulsive forces stem from these common temptations.

Retirement, of course, is a relative term. The shortened work week, enforced by edict, is a case in point. One must retire, not work beyond the legal forty hours, or the employer will be forced to pay a higher hourly rate, in effect, a fine.

Legal holidays seem never to be abandoned even after the cause they were meant to celebrate has been forgotten. Instead, there are countless excuses for increasing their number. Minor retirements en masse!

Social security payments are withheld from senior citizens who elect to work and earn. Activity is penalized; inactivity is rewarded.

Governmental unemployment payments often exceed what some persons could earn by working, thus inducing retirement.

Most corporations, educational and religious institutions, chambers of commerce, trade associations, and other organizations compel retirement at 65; many make it attractive to retire at 60; and we hear more and more of retiring at 55. The sole criterion is the number of moons that have come and gone; whether the budding process is dead, or at its very peak, is not even considered. As a consequence of this indiscriminate, rule-of-thumb procedure, many of the nation's best men are "put out to pasture."

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These illustrations suffice to emphasize the retirement syndrome. It is, today, the common fetish and the end is not in sight. Under these circumstances, it is remarkable that even a few individuals are capable of spontaneous and joyous effort, that is, are able to experience the maturing period. No wonder that the perceptive Ortega observed such individuals to "stand out isolated, monumentalized"!

In one sense, it is lamentable that those who have advanced in wisdom and maturity should "stand out isolated, monumentalized." Far better if there were more such persons – the few less conspicuous than they are. Not everyone will make it, of course, but maturity surely is within the reach of thousands at the modest price of conscious, persistent, dedicated, prayerful effort. The reward for realizing one's potentialities, whatever they are, may be the highest earthly life has to confer.

That my life still begins with each moment can be assigned in part to a stroke of good fortune – vocation and avocation are identical; work and pleasure are one and the same.

Beyond this, I have a first-rate retirement policy: short of effective compulsions to the contrary, I propose to ride my bicycle till I fall off! ◈

IDEAS ON LIBERTY

Accept the Challenge

IT IS MEN who have counted struggle as a blessing who got the big rewards of life. As Emerson said, "God keeps an honest account with men."

The hard surgical cases, where life hangs on a heart beat, do not go to the dilettante surgeon. The tough engineering problem, like building a bridge across a mighty river, does not go to the engineer who has always looked for the easy jobs. And the same for lawyers and top executives in business.

If at times you feel that you have not had the same chance that others have, ask yourself what chance did Abraham Lincoln have? Remember that "it is not so much the size of the dog in the fight that counts, but the size of the fight in the dog."

SAMUEL B. PETTENGILL

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CLARENCE B. CARSON

The Rise and Fall of England

7. THE INDUSTRIAL SURGE

THERE was a great surge of productivity accompanied by increasing exchange activity in England in the latter part of the eighteenth century and extending into and through most of the nineteenth. This productivity occurred in almost every field and was by no means confined to what is usually thought of as industrial. There were, for example, considerable increases in production of basic agricultural commodities. As one authority says, "Statistics of the output of grain are few and unreliable. It is, however, beyond doubt that annual production rose considerably in the second half of the century." Not only was more land brought under cultivation but also there were considerable increases of production per acre, as much as one third in the yield of wheat between 1750 and 1800.[1]

There appears to have been a similar increase in the production of cattle for market during roughly the same period. In 1750, a little under 71,000 head were sold at the major market at Smithfield. In 1794, there were over 109,000 offered for sale.[2] It is generally held, too, that the average weight of cattle offered for

Dr. Carson, Professor of History at Grove City College, Pennsylvania, will be remembered for his earlier FREEMAN series, *The Fateful Turn, The American Tradition,* and *The Flight from Reality.*

[1] T. S. Ashton, *An Economic History of England: The 18th Century* (New York: Barnes and Noble, 1955), p. 51.

[2] *Ibid.*, p. 245.

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sale had greatly increased. One writer says that the average weight of oxen offered at Smithfield had increased from 370 pounds in 1710 to 800 pounds in 1795.[3]

Sheep for sale at this market did not increase quite so dramatically: from approximately 656,000 in 1750 to about 718,000 in 1794.[4] But sheep were getting much heavier on the average than formerly, also.

Manufacturing

The surge in manufacturing production was much more marked than in farming. The most dramatic increase occurred in the making of cotton goods. Ashton says, "The number of pieces of broadcloth milled in Yorkshire rose from an average of 34,400 in 1731-40, to one of 229,400 in 1791-1800. Between the first and last decade of the century the annual output of printed cloths grew from 2.4 million to 25.9 million yards. . . ."[5] The woolens industry expanded much less rapidly. A vigorous pottery industry, however, was developed in the latter part of the eighteenth century.

Mining and iron and steel manufactures developed at a rapid pace. "The output of pig-iron in Great Britain in 1788 was 68,000 tons. In 1796 it was, for England and Wales alone, 125,000 tons, and a few thousand tons must be added for Scotland's contribution. In 1806 the British total had swollen to 258,000 tons."[6] As for coal, "There are no valid statistics of the production of coal, but the annual figures of exports from the great northern field may serve as a guide. For the decade 1701-10 they give an average of 183,000 Newcastle Chaldrons; for 1791-1800 the figure is 758,000." Indications are that production increase elsewhere was even greater.[7]

Shipping and Trade

Perhaps the best indicators of the great surge of production are the shipping and trade figures. The most reliable statistics exist for these undertakings also. The tonnage of boats leaving English ports in 1700 was 317,000 registered tons; by 1751 it was 661,000 tons; it had reached 1,924,000 in 1800.[8] In pounds sterling the value of English exports in 1700 was about 7½ millions; in 1750, 15 millions; in 1800, 42 millions. Im-

[3] Paul Mantoux, *The Industrial Revolution in the Eighteenth Century* (London: Jonathan Cape, 1961, rev. ed.), p. 161.

[4] Ashton, *op. cit.*, p. 245.

[5] *Ibid.*, p. 124.

[6] J. Steven Watson, *The Reign of George III* (London: Oxford University Press, 1960), p. 505.

[7] Ashton, *op. cit.*, p. 124.

[8] Mantoux, *op. cit.*, p. 100.

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ports had risen comparably, as might be expected.[9] The export of cotton goods rose precipitately within a few years. The total value of such goods was only about 360,000 pounds sterling in 1780. By 1800 it was more than five and a half millions. The import of cotton as raw material for manufacturing shows a similar increase: in 1781 it was 5,300,000 pounds of cotton and by 1800 it had risen to 56 million pounds.[10]

The Spirit of Innovation

The great surge of production and increase of trade was preceded as well as accompanied by mechanical inventions, new practices, new processes, reorganizations of production, and improved transportation facilities. The spirit of innovation, change, and invention seemed to be abroad in the land in the latter part of the eighteenth century. Samuel Johnson observed cryptically that "the age is running mad after innovation," that "all the business of the world is to be done in a new way; men are to be hanged in a new way; Tyburn itself is not safe from the fury of innovation."[11]

The inventions which were most impressive in that day and are the best known to this day were the machines which were applied to textile manufacturing. Earliest inventive attention was given to speeding up spinning, for in the early eighteenth century it took about ten spinners to provide the yarn for one weaver. This disparity was increased by John Kay's flying shuttle, patented in 1733, which enabled the weaver to work without the former assistance he needed. Lewis Paul developed a device for roller spinning in 1738 which was supposed to aid in the task of spinning; but in the form that he contrived it, it was never much used. Much more effective was the spinning jenny devised by James Hargreaves in the 1760's. It simply linked several spinning wheels together so that a spinner could spin several threads rather than one with the same motion.

Another step in accelerating spinning was Richard Arkwright's water frame, a machine that was operated by water power, patented in 1768. In the 1780's, Samuel Crompton developed the mule, a contrivance that could spin a great number of threads at once that would be of very high quality. The speeding up of weaving now became most important. The Reverend Edmund Cartwright designed an effective power loom in

[9] *Ibid.*, p. 102.

[10] *Ibid.*, p. 252.

[11] Quoted in T. S. Ashton, *The Industrial Revolution* (New York: Oxford University Press, 1964), p. 10.

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1784.[12] Most of these inventions were rather quickly adopted and thus began the transformation of textile manufacturing.

Improved Farm Practices

These were probably among the most famous inventions of the eighteenth century, but they were by no means the only important innovations for increased productivity. Almost every area of productivity was enhanced by changes in processes or practices. Certainly, a great deal of ingenuity went into improving farming practices and propagating them. Jethro Tull was one of the early leaders in farm improvements. He published a book in 1731 in which he advocated intensive farming. "He recommended deep hoeing and ploughing, and a system of continuous rotation of crops, thanks to which the land could bear, without exhaustion, a succession of varied harvests, and the wasteful practice of fallows could be suppressed or reduced. He explained the importance of winter food for the cattle and showed to what account could be turned nutritious roots such as turnips and beets."[13]

At about the same time, Lord Townshend showed on his estates how wasteland could be reclaimed by drainage, manure, and the planting of grasses. Robert Bakewell was the most notable innovator in developing new breeds of cattle and sheep. "He began his work in 1745, scouring the neighborhood for the breeding animals which came nearest to his ideals, and later breeding in and in from his own stock only, selecting the best and selling the less good rams and bulls to other breeders." So successful was he that "visitors came from far and wide, Russian princes and German grand dukes included, to see his farm and stock, and pick up all the information with regard to his methods that he could be induced to impart."[14] Horses began increasingly to be substituted for oxen to pull plows in the course of the eighteenth century. Along with this change, there was increasing use of iron in the making of plows.

New or improved techniques and inventions appeared in many fields. Thomas Newcomen invented a steam pump in 1709, and James Watt constructed an effective steam engine in the 1760's. This latter was used mainly for pumping water out of mines at first, but

[12] Michael W. Flinn, *An Economic and Social History of Britain* (London: Macmillan, 1961), pp. 163-65.

[13] Mantoux, *op. cit.*, p. 158.

[14] Gilbert Slater, *The Growth of Modern England* (London: Constable, 1939, 2nd ed.), pp. 190-10.

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by the nineteenth century its use to turn machinery was being exploited. The overshot water wheel replaced the undershot wheel. Coke was effectively used to make iron by Abraham Darby. Henry Cort patented processes for rolling and puddling iron in the 1780's. In textiles the use of chlorine and other chemicals greatly accelerated the bleaching process.

Better Transportation

One of the developments which greatly facilitated the productive surge was that of improved transportation facilities. In the latter part of the eighteenth century there was much building of improved roads in England, and the era of canal building got underway. These were aided both by new processes and engineering feats which were the marvel of the day. At the beginning of the eighteenth century roads in England were probably in no better shape than they had been five hundred years before. "Apart from London, there was not a single town which had permanent business connections with the rest of the country." About the middle of the century, turnpikes began to be authorized on a large scale. "Between 1760 and 1774 Parliament passed no fewer than four hundred and fifty-two Acts in connection with the construction and upkeep of roads." The most effective turnpike builder in the century was John Metcalf, a blind man. He developed a process for making a firm surface over bogs, and repaired and built many good roads.[15] These pikes did link England fairly well by the beginning of the nineteenth century; but it was by the efforts of Telford and Macadam after 1810 that superior roads were built.

The first of the great canals was the Worsley canal built for the Duke of Bridgewater by James Brindley. He undertook the building of it in 1759 and completed it in 1761. A few years later the great Mersey canal was begun. Work on many others soon followed suit: the Grand Trunk, the Bolton, the Bury, and the Kendal.[16] The peak of canal building was reached between about 1795 and 1815. "Between 1793 and 1805 the Grand Junction canal linked London with Warwickshire, with a side line to Oxford. The Leeds and Liverpool canal was being pushed up 600 feet to cross the Pennines by locks and so, via the old Aire and Calder navigation, linked up with the Humber. Birmingham was connected with the Severn."[17] So it was that England's great cities became canal ports.

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[15] Mantoux, *op. cit.*, pp. 108-17.
[16] *Ibid.*, pp. 124-25.
[17] Watson, *op. cit.*, pp. 518-19.

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Entrepreneurship

Increased Production

Inventions, processes, methods, and technical know-how might well have gone for naught had it not been for the development of entrepreneurship during this age. Entrepreneurs emerged to link together capital, labor, and raw materials and organize them for effective productive purposes. A good example of the new type of farmer entrepreneur was Coke of Holkham. He introduced new implements and methods, encouraged his tenants by granting long leases, and by careful husbandry increased the value of his estate tenfold during his lifetime.[18] Such attention to estates became quite the fashion in the eighteenth century. "George III had a model farm and welcomed the title of 'Farmer George.' Of Sir Robert Walpole, England's first 'prime minister,' it was said that 'he opened the letters of his farm steward' before state correspondence. . . . When Fox visited the Louvre, his mind was filled with the thought 'whether the weather was favourable to his turnips.' "[19]

But entrepreneurship reached its epitome with the manufacturers. These were the men who not only brought together capital, labor, and materials but also made the great innovation which we know as the factory system. The power needed to turn the ever larger machines could not be conveniently provided in the homes; hence, workers, machines, power, and materials were concentrated in factories. (Of course, on a small scale such concentrations had long existed in such activities as milling.) Among the most famous of such men – themselves sometimes inventors or introducers of new processes – were Josiah Wedgewood, Mathew Boulton, Richard Arkwright, Jedediah Strutt, Samuel Oldknow, Robert Dale Owen, Thomas Walker, and Robert Peel.[20] These men and others like them gave great impetus to the industrial surge.

No Real Revolution

The changes and developments discussed above are ordinarily described as the Industrial Revolution. They have been generally so-called since a book by Arnold Toynbee was published under that title in 1884. H. L. Beales notes some rather strong objections to the phrase, "The Industrial Revolution." He says, "The changes

[18] Mantoux, *op. cit.*, pp. 160-61.

[19] E. Lipson, *The Growth of English Society* (London: A. and C. Black, 1959, 4th ed.), p. 140.

[20] Witt Bowden, *Industrial Society in England towards the End of the Eighteenth Century* (New York: Barnes and Noble, 1965, 2nd ed.), pp. 137-38.

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which are described as revolutionary rose spontaneously from ordinary economic practice, and they were constructive in that they gave an increasing power of satisfying wants. It is impossible, too, to find a beginning or an ending of these developments. The inventions on which rested the enlargement of industrial enterprise established themselves only slowly. . . . The extended probings of scholars . . . seem to show that there never was an industrial revolution at all."[21] Nonetheless, he and most others have continued to use the phrase.

Though the present writer has no illusions that his preferences will have any effect, he prefers a much less loaded phrase, such as the "Industrial Surge" to describe the early developments, and refers to the old usage only for identifying what is being discussed in conventional terms. That there was a considerable surge of productivity there can be no doubt. That this surge got under way in England before it did in other lands is a matter of universal agreement. That the innovations and organization which promoted it spread from there and continue to enliven production wherever they are employed should be clear also.

[21] H. L. Beales, *The Industrial Revolution* (London: Frank Cass, 1958), p. 28.

Lessons for Today

Much attention has been focused upon the early years of this industrial surge in England. In view of the great concern at the present time with economic growth it would be understandable if a great deal more interest were shown than is. Certainly, anyone wishing to industrialize might expect to find instruction in what happened during these years. Economic historians, and others, have given considerable attention to describing and attempting to account for the surge.

The usual approach is to account for industrialization by a complex of conditions which set the stage for it. Before going into these, however, it will be well to discount one explanation that is sometimes given. Namely, some have attributed the rise of productivity in England to the impetus provided by the wars England participated in, more specifically, to those of the French Revolution and the Napoleonic Era. If that were the case, it would still not be clear why England preceded other countries, because they were engaged in warfare also and some of them had similar pressing needs.

But the evidence does not even point in this direction. The most dramatic spurt in productive activity occurred during the 1780's,

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after peace had been made with the United States and other countries. Ashton says, "After 1782 almost every statistical series of production shows a sharp upward turn. More than half the growth in the shipments of coal and the mining of copper, more than three-quarters of the increase of broadcloths, four-fifths of that of printed cloth, and nine-tenths of the exports of cotton goods were concentrated in the last eighteen years of the century."[22] It is true that the impetus continued after war broke out in 1793, but it was already well underway. Neither evidence nor logic supports the notion that the development can be attributed to war.

Some writers propose, too, that increased demand accounts for greater output. When rightly understood, this claim is both true and irrelevant. It is of the same order of explanation as that which would explain the sleep-inducing quality of the sleeping pill by its soporific character. Or, the demand theory amounts to claiming that increased productivity is caused by increased productivity. When we keep clearly before us the realization that money is a *medium* of exchange, that effective demand arises from goods and services (not from money), it is not difficult to understand that the demand theory really explains nothing.

Many Contributing Factors

Such fallacies aside, however, the explanation in terms of several conditions has merit. The following is an example of such an explanation, one that is along the lines of the background which has already been dealt with in this work in earlier chapters:

> Many circumstances thus combined to create a condition favorable for mechanical improvements. The incoming of independent-minded and skilled artisans from the Continent; the escape, especially in the north, from the monopolistic restrictions of corporations and gilds; the social ferments tending to dissolve the traditions opposed to change; the rise of rationalism and experimental and applied sciences. . . .[23]

He would add to these also the teaching of evangelical Protestants and the opportunity for profitable application of machinery.

Ashton adds to the above such factors as lower interest rates, the role of entrepreneurs, the part played by dissenters, the stimulation and impetus given by various societies, and so on.[24] And

[22] Ashton. *An Economic History of England*, p. 125.

[23] Bowden, *op. cit.*, p. 65.

[24] Ashton, *The Industrial Revolution*, pp. 10-17.

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the list of the particular conditions which set the stage for industrialization in England could probably be extended.

The present writer shares with these and other historians the conviction that the industrial surge arose out of the particular conditions that existed in England plus the efforts of men. Yet he feels that an enumeration of circumstances which could be extended almost indefinitely does not satisfy. It does not satisfy because it does not pin down what impelled the development, because it does not distinguish between what was essential and what merely adventitious, and because it does not provide that instruction which we would have from history. In the final analysis, it does not satisfy because there is a way of dealing with all the essential conditions by reducing them under a single heading.

"Economy" the Key

Economy is the key to the industrial surge. Men were impelled to the adoption of new procedures and the making of inventions by the desire for economy, and it was economy in operation that enabled them to increase production so rapidly. Evidence for this and examples to show it in operation need to be examined, but before doing this a profound theoretical objection to it needs to be dealt with.

Economy would not appear to be an appropriate heading for an *historical* explanation. Economy can be considered a constant, while history deals with change. In its basic meaning, men are bent by nature toward economy. The root meaning of economy is the thrifty use of resources. More broadly, to be economical is to employ as little as possible of the resources of production — land, labor, and capital — to achieve the largest amount of goods and services. It would seem likely that men have ever been inclined to do this.

No doubt, each *individual* is inclined to behave economically in the employment of his resources. He is inclined to put forth as little effort as possible, to use his capital sparingly, and to employ as small amount of materials as possible to effect the greater increase in his income. As such, this penchant might be expected to be a constant throughout history. But what is economical for an individual is not, under certain circumstances, economical for people generally. That is, it is possible for an individual to be quite thrifty with his resources and increase his income without increasing the general store of goods. Stealing is the obvious example. But all use of force to

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effect an increase of somebody or other's goods is of a similar character. The most common such use of force is government intervention in the economy.

Special Privilege

When government intervention is general in a land, it is frequently economical for individuals who benefit from it not to increase the general supply of goods and services. An individual who has a monopoly can actually increase his income by decreasing the goods offered at a particular time. The price of services can be enhanced by keeping newcomers from offering theirs. The mercantilism which was rife in Europe in the sixteenth through the eighteenth centuries affords numerous examples of the economy for individuals of possessing special privileges. So does the feudalism which preceded it. Whole ages have been dominated by the efforts of men to get and keep special privileges from government for themselves. It is this that makes the practice of *Economy* the subject matter of history and appropriate for historical explanation.

If men cannot use force to increase their incomes, they must increase the supply of goods and services in order to do so. By a kind of common consent this is what men have agreed to call economy. Since the latter part of the eighteenth century there have existed elaborate explanations of how in the absence of force when an individual increases his own income he is at the same time behaving in a way economically beneficial to society.

Away from Privilege

The productive surge came in England when a sufficient portion of the people turned their attention away from getting special privileges to finding ways to save resources and increase production. Even the spurt of productive activity which came in the 1780's illustrates the point. After 1782, British merchants no longer had special privileges on continental America. There was not only a spurt in shipbuilding in England, since they could no longer use the American colonies as a source, but also reinvestment of funds in such undertakings as domestic manufacturing which had formerly been employed in the maintenance of markets for which British merchants had exclusive privileges.

But Englishmen had been turning toward economy and away from special privileges for a considerable period before the 1780's. For more than 150 years the assault on privilege had been going on, in mounting fervor from the

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1640's, and it was to continue on into the nineteenth century. Indeed, the battle between Economy and Privilege was a long and bitter one. Every step of the way, the attempt to practice economy was contested. Kings tried to cling to their monopoly-granting powers. Then Parliament took to granting monopolies when the power had been wrested from the king. Rural enclosures by which the land could be economically employed were only accomplished by the grudging consent of Parliament and over the emotional protests of poets. New processes encountered tremendous resistance from those accustomed to the old. Workers sometimes rioted against the introduction of new machines.

Yet, skirmish by skirmish, Economy won the day in England. It won as special privileges were removed and restrictions which obstructed economy lost the force of law. It won as men witnessed the superiority of new techniques and machines. It won as enlightenment as to its public benefits gained sway over superstitions of the past.

There should be no doubt that the inventions, processes, methods, and organizations which led to the industrial surge were economical. The horse saved labor, for the same workman could plow a great deal more land with the fast-stepping horse than with the plodding ox. New breeds of cattle turned feed to greater amounts of flesh and less to bone. The overshot water wheel could provide the same amount of power with much less water used. One man could produce six times as much thread by turning the spinning jenny as he could formerly with the spinning wheel. The canals saved an immense amount of time in shipments of heavy goods. The steam pump made it possible to utilize mines much more fully and completely. The list could be extended but the point has surely been made.

Knowledge Is Power

That Englishmen were increasingly aware of and concerned with economy can be shown in many ways. Thrift was much advanced by banks and savings associations. Inventions were promoted by various societies. Daniel Defoe explored the rudiments of economy in his fictional *Robinson Crusoe*. Jethro Tull had focused attention on rural economy by his writings. Adam Smith made a definitive case for economy in *The Wealth of Nations*.

And, the conditions which set the stage for the industrial surge were conditions which permitted economy. The limitations of government which preceded and ac-

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companied it freed the energies of the English people to behave economically. The security of liberty and property enabled men to behave economically as individuals and made it necessary for them to behave economically in a way to benefit society if they would prosper. The moral base which directed the energies of men to constructive purposes inculcated a sense of stewardship which would have men be thrifty and industrious. The very thrust of men to employ reason in more and more areas was a thrust to economy of thought.

In short, as men established conditions which made individual economy socially beneficial, they directed their energies toward achieving Economy. This was a product both of the struggle of certain elements for political power, which resulted in the limitation of power, and increasing knowledge born of new ways of learning.

The industrial surge continued into the nineteenth century. The great productivity provided the material base for the greatness and leadership of England. It is now in order to make an account of England at the height of her leadership role in Western Civilization, in the course of which it will also be possible to indicate the more specific benefits to Englishmen of productivity. ◈

The next article of this series will describe the Pax Britannica.

IDEAS ON LIBERTY

Mass Production

THE OUTSTANDING FACT about the Industrial Revolution is that it opened an age of mass production for the needs of the masses. The wage earners are no longer people toiling merely for other people's well-being. They themselves are the main consumers of the products the factories turn out. Big business depends upon mass consumption. There is, in present-day America, not a single branch of big business that would not cater to the needs of the masses. The very principle of capitalist entrepreneurship is to provide for the common man. In his capacity as consumer the common man is the sovereign whose buying or abstention from buying decides the fate of entrepreneurial activities. There is in the market economy no other means of acquiring and preserving wealth than by supplying the masses in the best and cheapest way with all the goods they ask for.

LUDWIG VON MISES, *Human Action*

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CHEATING

WITHOUT KNOWING IT

PAUL L. POIROT

THE JUDGE was about to pronounce sentence upon the convicted confidence man. "You should be ashamed to cheat those who trust you," he admonished.

"But, Judge," came the response, "who else can I cheat?"

Most of us presumably know the rewards of serving rather than cheating those who trust us. How many times this very day have you served others to obtain what you wanted from them? Did you not buy or sell some commodity or service – thus serving a trusted and trusting friend? Did it occur to you to cheat, even if dealing with a stranger who might not know whether to trust you?

Presumably, we know it is wrong to cheat and know why it is wrong. The something he gains through fraud is subtracted from the character of the cheater; it degrades him. To cheat another is to cheat oneself in the process. To cheat knowingly is serious enough; but perhaps worse is to cheat without knowing it, for this leaves less chance of catching the culprit and correcting the problem.

Did I cheat today? Perhaps without knowing it? Let's approach this difficult question from another direction: Was I cheated today? Reflecting on my various purchases at the barber shop, restaurant, grocery store, service station, it seems unlikely. These friends surely would not cheat me, nor would I knowingly cheat them. As far as I know, these suppliers held clear title to their wares, delivering them to me as represented and unencumbered by other claims. Likewise, the money or whatever else I willingly gave in exchange was mine and now is theirs – entirely acceptable for their own use or as a medium for further exchange. We traded be-

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cause each of us wanted to, each gaining something more valuable to him at the time than the property he relinquished. And we will express our mutual satisfaction through similar transactions tomorrow or next week or next month or whenever the need arises. But not if one of us thought the other had cheated. In that case, the one injured might seek restitution or take his business elsewhere – probably both. To continue to trade with one who cheats would be to work for nothing; and most of us are allergic to work on those terms!

Some persons, of course, are allergic to work on any terms; and this may tempt such a person to try to cheat. An employee, for instance, might "soldier" on the job, producing far less than he could or should in return for his wage. A butcher with a heavy thumb, a short-change artist at the cash register, trash in the bottom of the basket, rocks in the coal, checks that bounce, building lots under water or inaccessible to water, counterfeit currency – plenty of ways to cheat if one wants to try. But it's no way to build a steady business with satisfied customers. There's no great future in it. And perhaps this explains why most of us rarely encounter such fraudulent practices in our daily affairs.

Possibly we may conclude that none of us knowingly cheated today. And how very nice for all of us! But let's have one final check before closing the books on this knotty problem.

The New School Building

What of the gathering this evening in the home of a neighbor to discuss plans for the new $6,000,000 high school? Any cheating going on there? These are good neighbors, hard-working, God-fearing, helpful and friendly people, none of whom would think of cheating. They will carefully discuss the importance of education for all children in the growing community. Some will recall the amounts by which school-taxes have risen over the past ten years; they will understand that the new school means a 10 per cent tax increase next year and probably for many years to come. They will conscientiously review the facts and circumstances, each trying to decide how to vote in the coming school election.

But will it occur to any one of them that such a collective decision-making process, the results of which are to be binding upon every taxpayer in the district, might be something like cheating? What of the young Jones couple who had counted on that extra $50 of school-taxes to help defray

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the costs of an operation for the baby? Or the elderly Smith couple, barely able now to maintain their modest home and cover the other necessities of life? Or the hundreds of other needs other families in the school district face that to them might seem more urgent at the moment than a $6,000,000 new high school and the attendant costs for operation and perpetual care?

True, everyone will have had an opportunity to be heard, a chance to vote. But in the final analysis, some will be compelled to buy educational facilities which they neither want nor can afford. And the compulsion will have been applied by their friendly, kindly, well-meaning neighbors who consider education to be one of the proper functions of the police power.[1]

Public Housing

Perhaps it calls for too harsh a judgment upon one's most intimate friends to conclude that they are cheating when they compel others to help build the schools that some believe to be needed. That such action involves cheating surely must be a minority point of view in most communities, if it is believed at all. Nevertheless, it may serve to illustrate the possibility of our cheating without realizing it. If we were to use such tactics to compel the Mormons of our community to help build Sunday school facilities in the local Presbyterian church, many persons would think we were cheating.

Good Presbyterians, of course, would never do such a thing! Those concerned would pledge their own resources to build and operate their own church school. But what of the proposal considered this evening by the ruling elders: Should the Presbyterian church join other churches of the community in support of the Interfaith Housing Corporation? Any cheating here? Certainly not on the surface, at least. The church pays $25.00 a year to become a voting member of the corporation – no strings attached or other obligations. The purpose of the corporation is to alleviate the shortage of low-rent housing, especially for families of minority groups some of whom may be displaced by a proposed new highway. Surely a project worthy of the cooperation of the various religious groups in the community! But what is a thoughtful Chris-

[1] The value of education or need for it are not at issue here – only the methods used. The case for voluntary rather than compulsory schooling is discussed at length in the book, *Anything That's Peaceful* by Leonard E. Read. (Irvington-on-Hudson, N.Y.: The Foundation for Economic Education, 1964), pp. 180-221.

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tian to do when he later discovers that the Interfaith Housing Corporation is simply a front to request Federal funds for housing to be built, not voluntarily by concerned individuals and religious groups of the community, but by the coercive procedures of the tax collector and the police power? Isn't it something like cheating to compel someone else to carry out one's own charitable impulse?

Organized Violence

To cross a union picket line, either to fill a vacated job or to buy goods or services from the besieged supplier – or to actively question the propriety of a student sit-in or campus demonstration – is thought by many to be a form of cheating. It is to be a "scab," "strike-breaker," "Uncle Tom" – at the very least, a "square." But how can it logically be anything but cheating when men organize to prevent others from performing essential services which they themselves refuse to perform? It is, or used to be, considered cheating to copy another student's answer on a quiz and claim credit for it as one's own. But isn't it also a form of cheating on the part of any organized group of students when they attempt by force or threat of force to foreclose an institution of learning or some part of it from use by other students and by faculty members wishing to engage in the peaceful pursuit of knowledge? Are we not cheating others if we deny them, in whole or in part, the use of their faculties or their property for any peaceful purpose they might choose?

The ways in which man may cheat are perhaps infinite. Even a tiny child, when he puts his mind to it, will baffle many an adult. And among adults are experts at the art of deception. But it is not the diverse and deliberate efforts of unorganized individuals to obtain something for nothing that most seriously concern us. This is not our real problem. By and large, we may and we must trust one another to behave as best each knows how.

The form of cheating most harmful to us as individuals and as a society occurs when we hide in a majority and quite thoughtlessly act to achieve our ends at the expense of somebody else.[2] We heedlessly authorize the government to do for us what we could never, in serious contemplation, bring ourselves to do on our own. Thus does one become the victim of his own irresponsibility, cheating without knowing it, and cheating himself most of all. ◈

[2] See "The American System and Majority Rule" by Edmund A. Opitz, THE FREEMAN, November, 1962, pp. 28-39.

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FREEDOM CUTS TWO WAYS

ROBERT C. TYSON

ABRAHAM LINCOLN, speaking in Baltimore in 1864, beautifully brought out the double-edged nature of freedom. He did this through a parable, after first explaining that the word freedom for some may mean for each man to do as he pleases solely with himself and the product of his labor, while for others the same word may mean for some men to do as they please with other men and the product of other men's labor.

The parable had to do with a shepherd, a sheep, and a wolf. The wolf feels free to attack the sheep. But the shepherd drives the wolf from the sheep's throat. The sheep thanks the shepherd as his liberator, while the wolf denounces him for the very same act. Plainly, Lincoln noted, the sheep and the wolf are not agreed on a definition of freedom.

To me the parable illustrates the conflicting meanings derived from freedom. Today we hear of freedom as never before, but just what does it mean? We hear of Freedom Workers, Freedom Marchers, Freedom Fighters. We hear of Freedom Now, Freedom for Students, Freedom from Want, Freedom from Authority, and, for all I know, maybe even Freedom from Freedom.

Yet in all this clamor over freedom, I find little or no reference to what I think is the necessary

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concomitant of freedom, the very thing that gives man his essential dignity, the factor that makes a society livable, creative, and truly free: namely, responsibility.

Without responsibility – by which I mean primarily self-responsibility – liberty becomes license, morals become elastic, and society becomes predatory, its people tending to become like the wolf in Lincoln's parable, lunging at the other fellow's throat.

Neither License Nor Anarchy

No, as I understand it, freedom is not license; it is not anarchy. Under freedom, no man is free to do entirely as he likes. After all, freedom involves morality; it involves discipline, an inner discipline, a conscience within the individual ever reminding him that his freedom stops where the other fellow's freedom begins, that no man is really free if he renders another man less free. And it makes no difference who lessens freedom, whether it stems from private or public sources. The fact is that most usurpation of freedom has stemmed from the latter. As liberal reformer Woodrow Wilson noted: "The history of liberty is a history of the limitations of governmental power, not the increase of it."

Indeed, this was the design for the American dream, for our Constitutional society. The design was carefully laid down by the Founding Fathers. They realized that freedom was not a grant of government. Such a grant would then be but a slender reed, for what government could grant, government could clearly also take away. In fact, freedom stems from a much Higher Authority than government. The Declaration of Independence holds "that all men are . . . endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

So through the Constitution and the Bill of Rights, the authors of our Federal Republic insisted for the sake of liberty that men in public office could not be blindly trusted, that they had to be made accountable and responsible, that the American government was to be strictly limited in its powers, subject to checks and balances, and expressly prohibited from infringing on the endowed freedom of the individual. Ours was to be a government of law, not of men.

Political Foundations of Freedom in America

Thus, the theory of government put forth by the designers of the Constitution was something unique in the history of government. They laid down the founda-

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tions of a society that was essentially dependent on individual conscience, on self-government, on each individual's sense of responsibility, love of justice, and respect for the framework of due process of law – that is, respect for the other fellow's freedom. Hence, our society was built on not one but many centers of governing authority, beginning with the governing authority within the person himself and extending to families and churches, communities and states, business enterprises, and other voluntary associations.

So ours is a society – thanks to self-government, to self-realization – that strives to encourage every individual to achieve whatever rank or distinction of which he is capable. It is a society with Constitutionally guaranteed freedoms of press, speech, assembly, and petition. It is a society of political freedom of choice for the individual citizen. It is a society whose economic system is built upon individual enterprise and ownership within the framework of a free market. As you know, this economic system has made us the most productive people in all history with the world's highest living standards. The system furthermore provides far and away our greatest weapon in the War on Poverty.

Signs of Sickness

Yet, because the responsibility side of freedom has been somehow lost sight of, our society and economy are not well; indeed, they are sick, and the evidence of this sickness can be readily found in the daily headlines, notwithstanding all the so-called references to freedom. Rioters in the streets are beleaguering our major cities. Crime rates keep on hitting new records, with more youthful offenders than ever before. Teenage shoplifting is a mounting problem for our stores. Drug addiction, especially by young people, is an increasingly corruptive and corrosive social problem. Family ties are weakening. Promiscuity is rising.

In higher education we have also seen a marked deterioration in moral standards. Cribbing during exams, for example, has always been a problem, but today more and more students seem to attach no dishonor to it whatsoever. Students talk of Student Power but precious little of Student Responsibility. Students have even taken over academic buildings by force and have held captive campus recruiters, deans, and other college administrators – ironically and clearly diminishing the freedom of the captives, all too often in the name of civil liberties and civil disobedience. Even the

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code of civil disobedience calls for accepting responsibility in terms of the consequences for infractions of the law. Yet when apprehended by the authorities, what is the first "demand" of the disobeying students? It's *amnesty*. But such amnesty hardly squares with responsibility.

One more point on campus rioting: In practically all the disturbances at our educational institutions, a small but noisy nihilistic minority has commandeered facilities and effectively blocked the freedom of the student majority to attend classes. The adversely affected majority all too often has been silent and has looked the other way. This response of indifference also strikes me as irresponsible. I do not suggest that the majority do battle with the disturbers, but rather that they rally to the cause of peace and rational discussion of issues, that they support the university administrators who are trying to maintain order and so to protect their freedom.

Inflation Attends the Welfare State

Economically, we also see signs of fever – and lack of responsibility. Maybe you heard of the response of the man getting his annual physical checkup to the doctor who told him that he was as sound as a dollar; the man shot back: "Doctor, am I that bad?"

Well, is the economy really sick? The answer depends on how you measure economic symptoms. Certainly, signs of inflationary stress and strain abound. The Federal budget is in perennial and ever rising deficit. The U. S. balance of payments is also in perennial and ever rising deficit. Our stock of gold has been dissipated to a dangerously low level. All manner of controls have been applied to American lending and investing overseas, although history is replete with their failure in previous applications. And, although the so-called "voluntary" wage-price guideposts proved to be a demonstrable failure, talk persists of new controls over wages and prices, while little is done about the underlying fiscal and legislative forces of inflation. That inflation is compounded by wage and salary demands by leaders of organized employees both private and public, both professional and nonprofessional, far beyond any semblance of productivity or merit. It is compounded by demands for all manner of handouts from the government – local, state, and especially Federal. In the name of welfare, these demands are for more and more – not tomorrow but today. These demands strain the body politic – and eco-

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nomic – and erode the foundations of our liberty.

In all these examples of social and economic sickness we see abuse of freedom; we see abandonment of discipline and responsibility – of self-discipline and self-responsibility – by those in private and public life. In other words, we see the emergence of the kind of freedom exemplified by the wolf in Lincoln's parable. The wolfish freedom may not always be overt and violent. It can be covert and subtle. It can be seen in disrespect for due process of law. It can be seen in a growing moral laxness, in indifference to corruption, in an ethical softness that is steadily eating away at our values and virtues, in the credit that every man is a law unto himself.

I guess what I am trying to say boils down to this: The other side of the coin of individual freedom is individual responsibility. You can't have the one without the other. Before you and I can govern others, each and every one of us must first learn to govern himself. Before any of us can blithely dismiss our external restraints, each of us must assume a solemn moral obligation to restrain himself. ◈

IDEAS ON LIBERTY

Character Must Be Earned

WHEN a man is on his own, an individual responsible for himself, he must earn a character—a personal character that is perhaps his first necessity. Others may then learn and imitate his qualities and capabilities. In a planned society he has no need of a character, for no such thing is wanted. No national or universal plan can afford to take the least notice of his personal character.

As an individual responsible for himself, a man must also acquire credit. Others must be convinced that he is credit-worthy; that he can be trusted; that what he undertakes he will perform to the limits of his ability. But when he is planned, nothing so troublesome is in the least necessary.

SIR ERNEST BENN, *Rights for Robots*

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Separation of Powers and the Labor Act

III. JUDICIAL COURTS versus ADMINISTRATIVE COURTS

SYLVESTER PETRO

THE institutional setting of each member of the National Labor Relations Board is a five-year appointment to what is known as a quasi-judicial tribunal, located by law, fact, and tradition in the executive branch of government. Appointment is by the President, with the advice and consent of the Senate. The duties are essentially judicial in character. One hears varying opinions, concerning whether or not the Board members should conceive of themselves as essentially policy-making participants in any current Administration, on the one hand, or judges on the other. The "Eisenhower Board" avowed and to some extent adopted a judicial stance; the "Roosevelt-Truman-Kennedy-Johnson" Boards, while still not entirely disavowing a judicial role, have on the whole adopted an essentially policy-making stance conformable to that of the Administration in power.

Federal judges also are appointed by the President, with the advice and consent of the Senate. To this extent, the institutional setting of Federal judges and NLRB members is the same. But to this extent alone. No Federal judge has ever asserted that his job is to effectuate the policies of a given executive administration. On the contrary, when Federal judges discuss the question, their uniform affirmation is one of obedience to the Constitution and to the Con-

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gressional intent expressed in valid legislation.

The Supreme Court of the United States has been accused of policy-making ambitions, both currently and in the past. Whether or not you or I credit such accusations is not material to the present inquiry. For no one can validly accuse the Supreme Court of a peculiar policy bias *conceived and pursued essentially because that policy is favored by the incumbent administration.*

Supreme Court justices have been a constant source of surprise to the presidents who appointed them. Justice Holmes's contempt for antitrust law and policy – a shock to the President who appointed him – is only one example of a number of such cases. It is incorrect to believe that the present Supreme Court, "activist" though it may well be called, is acting the way it is because it believes that the present or any past Administration wished it to act in that particular way.

A Case for Tenure

We come, then, to the first of two sharp distinctions between membership in the NLRB and Federal judicial office: the five-year terms of the former and the life tenure of the latter. The five-year term of office goes far toward insuring allegiance in each NLRB member to the Administration which appointed him, to the one with power to re-appoint him, or to both. There is no need to oversimplify the situation. Tradition may call for a "pro-union" Administration to appoint one or two "pro-employer" types to the Board. In such a case, the "pro-employer" Board member would be unfaithful to the Administration if he abandoned his former stance as a means of insuring reappointment. In order to keep the "bipartisan" show going, he must maintain some semblance of the penchant which got him his appointment in the first place.

If a Board member wishes reappointment at the end of his five-year term, he must satisfy the Administration then in power that he can be relied upon to act in accordance with that Administration's labor-policy views, subject to the "bipartisan" tradition. There is nothing sinister and nothing surprising about this. On the contrary, a given Administration has no basis for its appointments to the NLRB other than furtherance of its policies and political ambitions or payment of its political debts. Expecting an Administration which has gained power with the assistance of trade unions to appoint a Board which would deal as rigorously with unions as the law requires – that is as realistic

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as it would be to run for office on a platform which the voters demonstrably oppose.

The Political Process

It is true that a Board member is always in a position to "betray" the President who appointed him. The betrayal may even win him reappointment from a succeeding President who approves his new position. But this is of little significance. The fact remains that a majority of the Board will always be governed sooner or later by the political position of the Administration in power; five-year terms expire; then the Administration's labor policies reflect themselves in the new appointments. President Kennedy had a majority within a year or so of his accession.

It is possible that the Administration's labor policies will coincide precisely with those of the Congress which passed the legislation in question. Possible, but not likely. As time passes, the likelihood diminishes. An Act passed by Congress in 1947 is not likely to express exactly the policies that an Administration in 1967, or 1987, finds suited to its political and social objectives.

But even when Administration objectives coincide exactly with the legislatively expressed policies, it will be the Administration which controls the action of the quasi-judicial executive agency, not the legislation. It is important to bear this in mind because results in particular cases will be affected. Thus, though there may be a general policy coincidence between the legislation and the Administration, the Administration may still feel that in a particular case, for one reason or another, it is desirable that the impact of the legislation be softened, hardened, or redirected in some other way.

Plotting a Course

Our present structure of "administrative law" leaves plenty of room for this sort of thing. A busy General Counsel has to pick and choose the cases which he will prosecute. He cannot prosecute them all. Certainly he need not prosecute them all with equal vigor and persistence and acumen. After all, the main thing is to keep the staff busy. If it is kept busy in spite of the fact that one particular case is not prosecuted at all, or that it is put "on the back burner," what great harm has been done?

Or suppose the case is prosecuted so that it gets before the Board. Courts may not substitute their conclusions for those of the Board where there is substantial evidence in the record considered as a whole which supports the Board's finding. Not uncommonly,

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the record as a whole will sustain contrary findings. In such a case, the reviewing court, if faithful to this basic principle of "administrative law," may not vacate the Board finding, no matter which way it goes. Hence, it is perfectly permissible for the Board to go either way. And the judge who keeps faith with the law – as most Federal judges do – must enforce the Board order in either case. All this being true, the Board itself is in a position to do exactly what the General Counsel does in picking the cases to prosecute. It is in a position, in short, to make an exception whenever doing so is of great importance to the Administration of which it considers itself a part.

Proper Judicial Procedure

I am no muckraker and do not wish to exaggerate the incidence of such conduct on the part of either the Board or its General Counsel. In any event, it is enough that such possibilities exist, even if they have never actually occurred. Indeed, the analysis will proceed more disinterestedly and more expeditiously if it is realized that there is no necessity to establish that this sort of thing has or has not happened in any particular case.

For the major point in our inquiry is that nothing of the kind can reasonably be expected where judicial power is confined to men with life tenure who have been appointed to the insulated judicial department of government. If the Supreme Court is indeed an activist, consciously policy-making agency, rather than a genuine court of law, it is so because that is the way *it* conceives its function. If there is a flaw in the Court's position, that flaw is not a product of any defect in the Constitution, in the principle of the separation of powers, or in the institution of life tenure for judicial officers. It is a flaw, instead, in the conception of judicial office held by individual members of the Court. It is a product of their failure to understand the functional *inadequacy* of the courtroom as a political, policy-making institution, and the functional *superiority* of the courtroom as an institution in which justice under law may be distributed among particular parties litigant on the basis of minute consideration of the particular facts and of the legal arguments which the adversary system is bound in individual cases to bring to the attention of the judges.

The Court May Err

If misunderstanding and ineffective corrective measures are to be avoided, it is necessary to un-

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derstand, *as well as we can*, what motivates the Supreme Court to take an activist, policy-making position. Of course, it is always possible to jump to the conclusion that the Court does not care about the Constitution; that the justices are arrogantly determined to follow their own will; that they are engaged in a completely extralegal and extraconstitutional struggle for supreme power in the government of the United States. This is not only a possible position; in my opinion, there are occasions upon which it seems the most plausible explanation of certain decisions of the Court. As an example, I would cite the recent (1967) decision of a bare majority of the Court in the *National Woodwork* case.[40]

Mr. Justice Brennan wrote the opinion of the court for himself and Justices Warren, White, and Fortas. A majority was made by the special concurrence of Justice Harlan in the Brennan decision. Justices Black, Douglas, and Clark concurred in a dissenting opinion by Justice Stewart. With these dissenting justices I have concluded that Justice Brennan's opinion so blatantly flouted the clear meaning and intent of the statutory provision involved that the only possible explanation was a determination by the majority to challenge Congress's policy-making supremacy under the Constitution.[41] In my view, Justice Stewart was correct in calling Justice Brennan's opinion "a protracted review of legislative and decisional history in an effort to show that the clear words of the statute should be disregarded...."[42]

[40] For footnotes, see page 566.

Not Structural Defects

However, I would remind the reader here of two points. The first is that Justice Brennan could not possibly have been meaning to curry favor with the Administration which appointed him; he was an Eisenhower appointee. Nor could he have been motivated by a desire to promote his own career by currying favor with the present Adminstration. There is nothing that the current Administration can do either to hurt or help him on the Court.

The second point to remember is that, no matter how blatantly a life-tenure justice may seem to misconstrue legislation, there is always, in the end, an objectively insoluble problem concerning motivation. We may eliminate economic insecurity where the judge has life-tenure and the position pays him enough to preclude ambition. We may eliminate vulgar corruption, owing to the traditions and the high dignity of the Court. We may eliminate light frivolity,

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for there is plenty of reason to believe that the justices take their role seriously. But when these and other such motivating factors are eliminated, it is still not possible for the external observer-analyst to be sure about the causal factor or factors which actually produced the judicial opinion in question. It *could* have been so trivial a thing as stupidity, a law clerk who did a fragmentary job of research among the authorities or in the record of the case, or an appealing argument on the wrong side, or simply the hard case which makes bad law.

An Understandable Confusion

It is best, then, to operate on the assumption that, however egregiously the justices may act in particular cases, they nevertheless perform their duties in good faith — by which I mean, in accordance with their conception of their role on the Court. Often, we must remind ourselves, the Court interprets Congress's statutes well and faithfully, reversing the NLRB in the process. Often, owing to the inherent ambiguities of language or to sloppy or evasive work in Congress, an interpretation can go either way, and the critic cannot complain with any great force merely because the Court has adopted an alternative which he would have rejected.

Moreover, with law professors in a state of great confusion over the judicial role with respect to statutory interpretation, it is easy to understand that at least some of the justices will share their confusion. A professor of law has recently published the following statement:

> The myth that the courts only follow the intent of Congress inhibits most judges from examining solutions worked out in other countries, even when Congress had no intent or when that intent was not to solve but to avoid the problem. Thus, the Court in the *Lockout Cases* condemned the NLRB for "unauthorized assumption . . . of major policy decisions properly made by Congress," and then fabricated a Congressional intent to support its own policy decision. The Court could have gained greater insight into the problem and made a more responsible decision if it had examined the alternative solutions from other countries; but that would require an open admission that the Court was making the policy decision which Congress had refused to make.[43]

The Charges Re-examined

The foregoing comment may be broken down as follows:

1. Courts do not merely follow the will of Congress.
2. They are policy-makers.
3. It is proper that they make policy.

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4. Congress did not express a policy on the legality of collective-bargaining lockouts.
5. The Supreme Court made its own policies in the *Lockout Cases*, but it did so inadequately because it was afraid to admit that it was making policy which Congress had declined to make.

The first two statements are inaccurate, though not completely incorrect. The vast preponderance of Federal judges other than Supreme-Court Justices not only *say* that they are bound by Congressionally declared policies but act in accordance with that declaration, subject to three qualifications: (a) sometimes statutory ambiguity or other deficiencies require the court to contribute something more than mere interpretation to the decision which it must reach; (b) at times a Federal judge does play fast and loose with legal doctrine and statutory interpretation; (c) sometimes the court must follow an interpretation at variance with the plain meaning of the statute because the Supreme Court has already imposed such a variant. The latter is peculiarly relevant in labor law. A large proportion of Circuit-Court affirmances of NLRB decisions is owing to the fact that the Supreme Court has so often endorsed the NLRB's revisions of the Labor Act. After the Court has done so, the Circuit Courts of Appeals have no real alternative but to go and do likewise.

The third statement is not only incorrect, but seriously so. Aside from "gap-filling" and selection among alternatives where legislation is ambiguous, the Federal courts, including the Supreme Court, act improperly when they make policy. They act improperly from all relevant points of view: from the point of view of personal morality; from the point of view of Constitutional legitimacy; and from the point of view of functional-practicality. All Federal judges swear to uphold the Constitution as a prerequisite to their office. The Constitution (as well as the basic concept of representative government which underlies it) states that:

> All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

For reasons already stated, no court of law can represent the nation adequately; confined to a particular dispute in the courtroom setting, broad policy-making by judges is bound to be abortive. The nation, the law, multitudes of persons, and the future of representative government in the

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United States – all are in a state of crisis today owing in no small part to the Supreme Court's assumption of policy-making and even constitution-making powers over the past thirty years or so.

The fourth and fifth statements are incorrect. Congress did not say in so many words that the collective-bargaining lockout was lawful. But such a lockout was plainly lawful at common law, and there was no language or no policy in the National Labor Relations Act from which an inference of Congressional determination to change the common law could properly or logically be drawn. On the contrary, there was much Congressional language from which the Court could – and did – infer that Congress intended to preserve the legality of the collective-bargaining (as contrasted to the coercive anti-union) lockout. The Supreme-Court decisions in the *Lockout Cases* were manifestly correct interpretations and applications of Congressional intent. Moreover, to suggest that the Court should have referred to *European* experience in order to determine how to govern *Americans* demonstrates a doubly peculiar lack of understanding of the system of government of the United States. It fails to understand not only what representative government means, but also what the constituency is whose views and preferences are to be represented by government and reflected in law.

I have discussed the foregoing comment on judicial-policy-making power at some length because of the help it affords in understanding the policy-making penchant of the Supreme Court. The comment does not represent the aberrant view of a single law-school professor. It represents, to my personal knowledge, a substantial body of opinion among law teachers, and therefore of necessity among law students, practitioners, and even judges. It is really ingrained enough to be called an unreconciled contradiction in our legal tradition – one which can be removed only by spreading a better understanding of the meaning and the requirements of representative government and of the Constitution.

Different Traditions

We have come now to the second sharp distinction between the institutional framework of the Federal judiciary and that of quasi-judicial administrative tribunals: the history and the traditions within which they respectively operate.

It would be a mistake to assume that an administrative agency such as the NLRB is something new, without history or tradition.

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The mistake is understandable because that history and that tradition are hidden and forgotten. The history and tradition which the NLRB carries forward today was rejected in the middle of the seventeenth century in England. It was rejected on the basis of experience so repugnant, and so tragic for men who prized law and decency, that it could not be revived till consciousness of its terrible consequences had dimmed with the passage of more than 250 years.

I refer, of course, to the abolition in the seventeenth century of such administrative tribunals as the Star Chamber and the Court of High Commission. Those agencies, like the NLRB, were rationalized as "expert" tribunals which could be relied upon to do "speedy justice," unhampered by the "technicalities" of the law courts, and obedient to the *executive* policies which parliament and the courts of law were frustrating.

The constitutional revolution which took place over a period of more than forty years in England during the seventeenth century had two significant results, both relevant to our present inquiry: (1) the assertion of parliamentary policy-making supremacy, involving a radical reduction in the power of the executive; (2) the creation of a judiciary insulated from political pressures by life tenure in office, involving the abolition of all such quasi-judicial agencies as the Star Chamber.

The English Influence

Two great legal scholars – Sir Henry Sumner Maine and Professor William W. Crosskey – have demonstrated both broadly and in detail that the main features of the Constitution of the United States were the direct product of the English experience during the seventeenth century.[44] It is impossible to read the Constitution against the background of that experience and come to any other rational conclusion. Article I gives *all* legislative policy-making powers to Congress; Article III gives the whole judicial power of the United States to life-tenure judges.

The result was to interrupt the history and the traditions of administrative courts. We had none for a long time, and even after the Interstate Commerce Commission was created at the end of the nineteenth century, we still had little "administrative law" till the thirties. Few lawyers will now remember the names of the men who served in the Star Chamber or the Court of High Commission, if indeed those names were ever widely known. But neither will many lawyers remember the

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names of ICC or FTC or CAB or NLRB members.

It seems to be in the nature of an administrative court to operate anonymously. Even today, NLRB decisions emerge anonymously. One is tempted to infer a lack of pride in or perhaps a hesitancy to assume responsibility for the NLRB's product. And the inference is strengthened by the fact that normally only dissenting or specially concurring opinions are signed by NLRB members.

A Shining History of Intellectual and Moral Courage

The history and traditions of the Federal judiciary are strikingly different. They trace directly back in an unbroken line to the great English chancellors and judges, even beyond the time when life tenure was accorded judges. It is a history full of shining examples of intellectual and moral courage – of judges who time after time vindicated the maxim, "Let justice be done though the heavens fall." Roscoe Pound has described how the king's judges defied the king's will even though they served at their king's pleasure.[45] *Their* names are known; even in the Year Books, the judges are identified. One does not need to be a legal scholar in order to recognize such names as Coke, Holt, and Mansfield, or Marshall, Story, Shaw, Field, Holmes, Brandeis, Cardozo, Jackson.

It is a serious shortcoming – a failure to grasp one of the powerful determinants of human action – to underrate the influence of such a tradition, especially in the law, where a judge's nose is rubbed willy-nilly so often in what his predecessors have said or done.

That thinnest, most unperceptive, and most inaccurately designated of all schools of legal thought – "legal realism" – holds that judges not only do but *should* decide cases in accordance with their own inner intimations of immortality. But the "legal realist" does not explain how a person trained in the law, acting in a living tradition, thinking, as he must, in the categories of thought which prevail in the law, can possibly hand down decisions outside that tradition and those categories.

Asking a career, life-tenure judge to act in the fashion that "legal realism" suggests is the same as asking a person to write without the alphabet. The only thing produced is an unintelligible mess, and few judges are willing to befoul their tradition and the law books that way. And so most judges, especially those for whom judging is a lifetime career, tend after a while to settle themselves down into carrying on the great

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tradition of obedience to *law* as opposed to personal preference or political expediency.

Consistency

Continuity, consistency, predictability – these are the values which most Federal judges prize and which they try to achieve. In contrast, the field of "administrative law" presents a spectacle of violent change in the "law" with each change of Administration. Judges think that the function of law is to help the community as a whole by giving a firm standard to which persons in general may adjust their conduct without fear of finding, after they have acted on one legal assumption, that the law has been changed. Administrative agencies consider "law" only another tool with which to advance the interests and policies of the Administration in power.

I remind the reader of the vicious cunning illustrated by the *Bryant Chucking Grinder* case.[46] The "Eisenhower Board" had held that unfair practice charges should not be allowed to relate back to pre-election conduct. The rule made good sense. A party should not consent to an election when he means to challenge it thereafter because of pre-election conduct. However, the "Kennedy Board" found the rule unacceptable and simply reversed it. In so doing, it laid the basis for giving unions exclusive bargaining status and for imposing the duty to bargain on employers in hundreds of cases – in spite of the fact that the employees in those cases had, in secret-ballot elections, rejected collective bargaining.

Courts do make and change law to some extent. Unfortunately, as we have seen, they sometimes do those things even when the existing law is clear enough so that they are not required to do so by the necessity of deciding the case before them. Contrary to academicians of the kind I have mentioned above, there is no justification for such conduct. On the other hand, it is well to understand two things about it. First, the phenomenon is confined to relatively few judges, mainly on the Supreme Court. Second, it creates a power struggle between those few judges, on one side, and Congress, on the other; it does not necessarily align the judicial power with the executive power; and thus does not create so dangerous a threat to the principle of the separation of powers and to congressional policy-making supremacy as does the grant of judicial power to an executive agency.

The Weakest Link

Judicial power is the "weakest" of the three aspects of govern-

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mental power. It controls by itself neither men, nor guns, nor money, nor votes. If Congress did not keep itself so busy bootlessly trying to legislate this nation into a paradisial state, it could without too much trouble keep the Supreme Court vividly aware of its inherent weakness. If, for just a few years, Congress would police Supreme-Court decisions – instantly responding to so blatant an example of statutory misconstruction as occurred in *National Woodwork* by a suitable statutory amendment – even the dullest or the most arrogant Supreme Court justice would learn that he was not commissioned by the Constitution with the supreme and autocratic power which some of the justices have arrogated to themselves.

That would be a troublesome and an annoying job for Congress; an unnecessary one, too, since the Justices *ought* to know better, even if the professoria do not. But at least it is practical and possible for Congress to control the Supreme Court. It is a small body, turning out a limited number of decisions. In the last resort, Congress could simply take away much of its appellate jurisdiction without doing irreparable injury to the nation.

In contrast, the job of policing and controlling the activities of administrative tribunals is very nearly hopeless. There are so many. They do so many things. They grind out so many decisions. Their activities are as often off the record as on. The confusion between their powers and those of the reviewing courts creates an infinity of problems in itself. Allocating responsibility is extremely difficult. For example, the NLRB constantly contends that it must be doing a good job because the Courts of Appeals enforce a vast preponderance of Board orders. But the Courts of Appeals *must* enforce most Board orders because the substantial evidence rule ties their hands; moreover, by now, with the Supreme Court's support, the Board has the bulk of the substantive law under the statute in a posture such that it can write decisions pretty much at will, no matter what the facts are.

Conclusion

Congress's policy-making legislative supremacy, and with it this country's hope for an effectively operating representative government, is endangered by the merging of judicial power into such executive agencies as the National Labor Relations Board.

Delegating judicial power to an administrative agency is both unconstitutional and impractical. It

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is unconstitutional because the Constitution confines the judicial power of the United States to an independent judiciary composed of life-tenure incumbents. It is impractical because competent judging cannot be expected from limited-tenure political appointees who operate outside the long and sustained judicial tradition of subservience to law rather than to political exigency. The principal argument in favor of specialized quasi-judicial administrative tribunals is based upon an erroneous and deceptive conception of "expertise." The relevant "expertise" must be in the art of judging. The real experts in that art are the judges who sit on courts of general jurisdiction.

Creating specialized quasi-judicial administrative courts, subject to fragmentary and limited judicial review, produces neither expert nor expeditious judicial administration. It produces, instead, uncontrollable confusion. Out of that confusion, the executive branch emerges with precisely the concentration of governmental power which the outstanding achievement of the United States Constitution – the principle of separation of powers – was designed to disperse. As Thomas Hobbes said, liberty is fragmented power. The result today of reconcentrating power is a badly governed country. Tomorrow, if history is any guide, we shall have tyranny.

The process has gone far already in the field of labor policy. Although these matters are hard to quantify with any precision, in my judgment the Labor Board has managed to gather a preponderance of the policy-making power in its hands, together with executive and judicial power. Congress's will to assert its Constitutional power must not be weakened by doubts of its functional and representational superiority as legislator and policy-maker for the nation. It is nonsense to hold that the President or his bureaucracy better represent the nation. It is equal nonsense to believe that courts or administrative agencies can isolate the consensus of the community into a set of coherent basic policies better than Congress can.

If Congress wishes to escape the fate of the British House of Lords and to preserve the representative character of this government, it must respect and enforce the principle of the separation of powers. This means that Congress must repeal its delegation of judicial power to the National Labor Relations Board and revest that power in the Federal courts.

Problems will remain. Some judicial incumbents are unable to distinguish judicial activity from

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legislative activity even when the two are clearly distinguishable, let alone when, as often happens, it is difficult to distinguish them. Moreover, some judicial incumbents believe that judicial power is tantamount to legislative power, at least so long as they can get away with it. Ultimately, however, it is a simpler matter for Congress to correct such judicial mistakes and to subdue such power-lust in judges than it is to maintain its position against a multi-powered executive.

So, even if Congress, respecting the Constitution, should confine judicial power to the Federal judges, it will have to keep a wary eye on its storehouse of legislative power. Raids by the other branches can be expected. But this is inherent in the nature of men and things. It is not only for liberty that the price is eternal vigilance. ◈

FOOTNOTES

[40] 386 U.S. 612 (1967). I have discussed this case at length in 32 Law and Contemp. Prob. 319 (1967).

[41] Ibid. at pages 337 et seq.

[42] 386 U.S. at 650.

[43] Summers, American and European Labor Law: The Use and Usefulness of Foreign Experience, 15 Buffalo L. Rev. 210, 218 (1966).

[44] Cf. Maine, Popular Government 196 et seq. (1885); 1 Crosskey, Politics and the Constitution in the History of the United States 414-68 (1953).

[45] Pound, The Development of Constitutional Guarantees of Liberty 16, 23, 25, 32, 40 (1957).

[46] See the text, supra, at note 20.

The Rule of Law

THE END of the law is, not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of laws, where there is no law there is no freedom. For liberty is to be free from restraint and violence from others; which cannot be where there is no law; and is not, as we are told, a liberty for every man to do what he lists. (For who could be free when every other man's humour might domineer over him?) But a liberty to dispose, and order as he lists, his person, actions, possessions, and his whole property, within the allowance of those laws under which he is, and therein not to be the subject of the arbitrary will of another, but freely follow his own.

JOHN LOCKE, *Second Treatise*

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Devolution

Experimenting, Nature's hand once flung
a fledging from its aerie's lofty roost,
and for a moment, one bright arrow hung
suspended where no other had been loosed;
one bold bald eagle bravely learned to fly
where timid wings had never brushed the sky.

On currents unsuspected until then,
one eagle soared, alone, and unconfined
by instincts binding goose and pelican
to paddle in a wake, to fly behind
the bird ahead; to go where leaders went.
One eagle circled freely, free, content.

But, faintly, to the eagle's lone domain
there rose enticing songs of happiness
from birds who never had to brave the rain,
or bear the winter's numbing, fierce caress.
And as the eagle faced survival's tasks,
he came to doubt the price that freedom asks.

Today, the eagle claws a shredded limb,
unblinking eyes fixed more than miles beyond
his cage, and broods upon the empty hymn
that brought him drifting slowly to the ground:
Free now, from tyranny of endless sky;
Free not to hunt,
or build a nest,
or fly.

JAMES E. MCADOO

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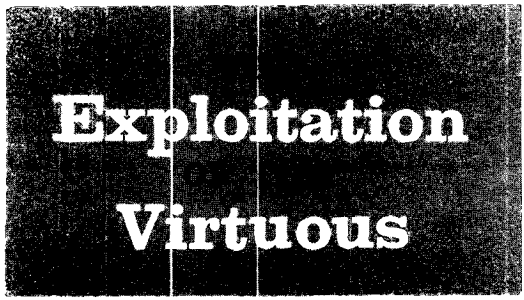

ROBERT JAMES BIDINOTTO

THE HORDES of the impoverished who recently dwelled in Washington demanding more welfare assistance, public housing, and a guaranteed income managed to resurrect as their justification the old but familiar cries of "exploitation" and "social injustice" which, they said, had been their fate under the American system. What these terms meant to the demonstrators was apparently at odds with what the dictionaries say they mean, but the "liberal" leaders and propagandists repeated them, too, and with each repetition of each slogan the pickets and marchers felt more victimized by the capitalism they have been taught to hate, and more self-righteous in their crusade for cradle-to-grave welfare. Their support came from both those who should know better, and those who *do* know better. In the latter category are those who have vested interests in the pressure-group warfare of the welfare state.

It is my contention that there *is* officially-sanctioned social injustice in our nation. But the system which is its root cause is not capitalism, nor are the principal victims of this injustice those for whom the Leftists mourn.

Let us first discuss the word *justice*. My dictionary defines the term "just" as "given or awarded rightly, or deserved . . . rightful, legitimate, deserved, merited. . . ." The clear implication is that justice consists of recognizing and granting those things which are rightfully and deservedly claimed by another man, or, giving men exactly what

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they deserve. Any more or any less is, by definition, a breach of justice.

Properly defined then, "social justice" would mean the principle of granting and accepting the deserved and rightful in relations between and among groups and individuals in society.

But what is wrong with the concept of justice promoted by the welfare-state advocates? It is simply that what they preach is not justice at all, but out-and-out *in*justice. What they favor is an abandonment of the concepts of deserved and undeserved, earned and unearned, and right and wrong. Their aim is as old as the one which motivated the world's first thief: "the fatal tendency," as Bastiat called it, to live at the expense of one's fellow men.

Freedom and Justice

A truly civilized society exists by means of free, voluntary exchange of values between consenting and willing individuals. It is the function of the government of a free society to promote justice. One of its more specific missions is to assure that exchanges are willing and voluntary, not forced and fraudulent. The initiation of force is outlawed by the government of a just culture. Such a society exists using reason, not plunder, as its means of survival. The state apparatus exists for the explicit purpose of protecting individual rights.

The only social system based upon the recognition of individual rights is capitalism. Capitalism requires of man his creativity – his ability to produce goods and services – as the price of his survival, for it recognizes the essence of justice: that a man receive what he earns by his own effort and thought, and not what he can plunder from the creative efforts of others. It allows men to trade with one another to mutual advantage in uncoerced exchanges. Capitalism encourages the best men have to offer: thrift, practicality, ambition, hard work, and honesty. Above all, it asks that men use to their fullest extent the productive ingenuity of their minds. Under *laissez-faire* capitalism a man is judged by his accomplishments, and the means he employs to achieve the values he seeks. Capitalism does not separate *ends* from *means*.

This system, based on justice and the respect of individual rights, built the most wealthy, productive, and powerful nation that has ever existed.

Victims of Intervention

But note what happens when government ceases protecting individual rights and actively vio-

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lates those rights instead. Who suffers and is victimized when our nation accepts the collectivist premise that it is proper to exploit an individual for the sake of society, and that individual rights should be subordinate to "public good"– as determined by democratically-elected politicians?

Our American welfare state, like other statist-oriented systems, is run on the tacit premise of "from each according to his ability – to each according to his need." That is the implied, but seldom-stated, basic principle of which the New Deals, Fair Deals, New Frontiers, and Great Societies are but a manifestation. It is the implied justification of the Guaranteed Income proponents, the advocates of conscription, and the Welfare Statists. What this principle means is illuminating.

It means that the need of one man constitutes a demand on the men of productive ability to fill it . . . as a matter of right to the "needy" man. The means of enforcing this principle is the coercive power of the state, which confiscates the product of the able and creative to undeservedly benefit those who neither produce nor create.

What determines who shall be looted in this manner? Is mere possession of wealth the basis of the redistributionist creed? The answer is no. Wealth is something that has to be produced before it can be possessed. The allegation that it is the "possession of excess wealth" that is being rectified by this principle is a smokescreen. The degree to which one is plundered is determined by the degree of one's *productivity*, or as I pointed out earlier, by the degree of one's economy, practicality, ambition, initiative, labor, integrity – the productive virtues. The key virtue being man's rational faculty, his mind, and his creative use of that faculty, it is easy to see what is ultimately being looted and redistributed. It is man's *mind* that is being plundered, through confiscation of the fruits of man's intelligence. It is thus the man of the greatest virtue who is hurt the most by redistribution.

Subsidies for Failure

What determines who shall be the recipient of the plundered wealth? One's need of that wealth – his inability or unwillingness to produce and create by using his intelligence to its fullest extent. In other words, *one's faults!* Who stands to gain and who stands to lose in such a society? Who is exploiting whom?

The producer is chained to produce for those who cannot maintain their own lives. The creator

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is harnessed to fill the stomachs, clothe the bodies, and build the houses of those who create nothing. The able man becomes a serf of the man who is not able to fill his needs, claims, and demands by his own effort. The best are punished and shackled for the sake of the least and the worst. The welfare state, established to correct an imaginary injustice, has perpetrated the worst immorality: exploiting the virtuous for their virtues. In such a society, to improve oneself and show progress means that one gradually strangles himself through his own effort; that the better one gets, the more demands are placed upon him, and the more of a slave to society he becomes. And worse: he is a slave not to somebody else's superiority, but to his neighbors' inferiority.

"Might Makes Right"

When a nation proclaims the superiority of the collective whim over an individual right, it embraces a most peculiar standard of morality, based on the simple addition of numbers. The principle invoked is that might makes right, that the size of one's gang is his sanction to somebody else's property. One might say, "But it's perfectly legal to tax one man to benefit another. After all, the laws governing welfare were democratically passed by the majority." This is even worse; it means that (a) the legal system of the nation has been corrupted by the worst of principles, and that (b) "the majority" recognizes itself as being outside the influence of the moral code which the state imposes upon individuals; that any injustice can be committed in the name of the "majority," or "society," or "the common good"; that morality is a numbers game of factions, individuals, minorities, and the omnipotent majority. The alternatives in the game are strictly limited. One either becomes a looter, or one is looted; one is either a parasite living upon others, or one is a victim — a human sacrifice — to that parasitism.

Join a Pressure Group

How does one cash in on the welfare state? One joins a pressure group. The purpose of a pressure group is to pressure the legislature to pressure the producer-victim-taxpayer, extorting from him in proportion and to the extent of his virtues. This leads to the scandalous corruption of legislators by lobbyists, whose only aim is to get a special coercive advantage over their neighbors via the power of the government. The presumed beneficiaries of the welfare state are the confirmed para-

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sites; and their victims are those who, under free competition, would be the most successful. And while pressure-group warfare escalates,[1] new bureaucracies are created and new bureaucrats employed to legally plunder men's savings and distribute the loot among those seeking favors. And it is the doer, the thinker, the worker, the *producer,* who foots all the bills. *There* is the true "social injustice and exploitation" in America.

The remedy lies in the discovery of individual rights and the only system that can preserve them: capitalism. It is a false idea that the producer of wealth should feel guilty because of his ingenuity, creativity, and riches. Has he not earned the fruits of his effort? Is he to be apologetic about virtue and success?

It is the task of libertarians to use every opportunity to promote the system under which no one is sacrificed, exploited, or treated unjustly for another's sake. That system is capitalism, with its respect for individual rights. Its ruling principle is justice for all. ◈

[1] Walter J. Wessels, "The Theory of Political Escalation," *Freeman,* February, 1968, p. 81.

IDEAS ON LIBERTY

The Interstate Commerce Commission

—a system of laws and rules and an administration of those laws and rules in which the overweening goal is to maintain at as high a level as possible the cost of moving the country's goods, in the interest of the financial welfare of the movers. The basic goal of regulatory policy is to maximize the earnings of the common carriers, particularly those in financial difficulty.

Much attention is given to the effect of technology upon institutions. Perhaps not as frequently noticed is the ability of institutions to counteract technology. The Interstate Commerce Commission and the regulatory system that it has helped to create have done a truly remarkable job of battling technology head on and, to a considerable extent, winning. The creation and maintenance of large barriers to entry where no significant natural barriers exist (for example, in motor trucking) has been a monumental task, which the ICC has executed successfully in little more than three decades. A motor carrier's largest single asset is simply its permission to be a motor carrier.

From *Indiana Business Review,* March/April 1968
"The Nation—Topsy-Turvy World of Transportation Regulation" by
David W. Maxwell, Professor of Business Economics and Public Policy, Indiana University

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HAVING LIVED through the past two decades and watched the steady growth of cliché versions of history, I doubt that future generations will ever know the truth about our times. But if error persists, it won't be the fault of William Rusher, the publisher of *National Review,* who has set down his experiences as a Senate subcommittee investigator in a remarkable book, *Special Counsel* (Arlington House, $10).

Bill Rusher went to Washington, D.C., in 1956 to help Bob Morris investigate communism for the Internal Security Subcommittee of the U.S. Senate. Despite the fact that Senator Joe McCarthy had long since been censured, and was then living out his last days in innocuous desuetude, anything connected with anti-communist activity was still called "McCarthyism" in the middle fifties. The stereotype had already jelled; no matter how meticulous Bob Morris and Bill Rusher might be, they were still "witch-hunters."

Combatting the "witch-hunter" allegation, Bill Rusher's book is an attempt to prove to young people of the late sixties that the activities of the communist apparatus in the United States of the fifties and before were not in the best interests of the Republic. Unlike the late Senator McCarthy, Bill Rusher doesn't make mistakes in arithmetic or treat the English language as something that is incapable of expressing nuances. But will this book cause a single "liberal," whether young or old, to recheck his sights on history? Perhaps I am too cynical, but I doubt that Rusher will penetrate the "liberal" hide. He himself gives the reasons for supposing this: the "liberals" – and the word should be continuously placed in quotes – had gone over to various variants of socialism in the New Deal period, and their own self-regard had become implicated with the craving to believe that Soviet Russia, despite everything, must somehow come out right in the end. Economic determinism, acting on capitalism and communism alike, must lead us all to "convergence" in the "liberal's" mind. In deference to this

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view, "Red-baiting" must be regarded as something that is "against history"—and the Rushers who presumed in the fifties to help hunt out communist subversion were simply wasting time and the taxpayer's money.

The Record Speaks

For those who don't care for stereotypes, however, Rusher's book is full of irrefutable stories. It should cause some libertarians to recheck their sights. Too often the libertarian assumes that if you put your trust in the market, you don't have to worry about such things as the Cold War. But the Cold War has enabled the Soviets to use the mechanisms of the market as a "cover" for dirty undercover political and paramilitary activity.

For example, the early years of Harry Gold, the mousy, unobtrusive little man who stole the basic secret information about the production of the atom bomb and delivered it to the Soviets, were spent in industrial spying for his foreign masters. Gold was a chemist who, in 1922, worked with a sugar company in Philadelphia. The depression gave him proletarian ideas, and he allowed himself to be recruited to steal the accounts of secret manufacturing and synthesizing processes for transmission to Moscow. In time Harry Gold was passed for handling to Gaik Ovakimian, a Soviet trading official who worked for Amtorg, the official Russian trade corporation, in New York City. Ovakimian wasn't in America to buy and sell goods; he was here for building an apparatus that would enable the Russians to bypass the difficult work of developing their own products for the market, or for the Soviet armed forces.

One thing led to another, and Harry Gold, after stealing a staggering array of quasi-military industrial secrets for a succession of Russian handlers, found himself in Albuquerque, New Mexico, where he met David Greenglass, an employee at the Los Alamos atomic development installation. The secret designs of the atom bomb passed from Greenglass to Gold, and from Gold they went on to Moscow.

Bill Rusher tells this particular story with a fine relish for detail. What it proves is that communism isn't content to use trading organizations for their stated purpose. If Amtorg had been just a trade corporation, Harry Gold could not have succeeded as a spy. Communism isn't primarily interested in market considerations; everything that it does is subordinated to political and military aims. So how deal with Moscow on a free trade

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basis? You may be vitally endangering your own free system if you do.

Treasury Intrigue

Another poser for those who think we can do business as business with the communists is Bill Rusher's tale of how Soviet sympathizers in the U.S. Treasury managed to undermine our financial policies vis-a-vis Nationalist China. In the last days of World War II the Chinese government of Chiang Kai-shek was threatened with galloping inflation. Secretary of the Treasury Henry Morgenthau had promised to make five hundred million dollars available to China. It was supposed to go in the form of monthly gold shipments. But Harry Dexter White and other Treasury employees, for reasons that have never been fully explored, dribbled the money out at a snail's pace. Eventually Henry Morgenthau read the riot act to his dilatory underlings; he had given his written word to China, and, as he said, "a person's word, and particularly his written word, means something." "What about the honor of this Government?," Morgenthau asked his sophistical employees. After Morgenthau had delivered his dressing-down, the gold began to move to Nationalist China in accordance with the agreement. But by now it was too late; hyperinflation had already set in, and the financial collapse of the Nationalist government could not be stopped.

Bill Rusher helped investigate the burrowings of communist sympathizers into the waterfront unions of the Pacific coast and Hawaii. He interviewed the "redefector," John Santo, after the collapse of the Hungarian freedom movement in 1956. He helped expose the workings of a communist cell in New Orleans. He and Bob Morris poked and prodded witnesses who were sometimes willing to talk without taking the Fifth Amendment about such various things as our post-war China policy, or about Communist Bella Dodd's alleged pressure tactics in New York State politics, or about the suicide of Herbert Norman, the Canadian Ambassador to Egypt. The good stories tumble out of his capacious memory. And, as a lawyer who believes in evidence, the good stories are always carefully documented, carefully checked.

There is no "McCarthyism" here. Mr. Rusher does not think that the West will die as the result of a communist "conspiracy." He thinks it a far greater danger that the West may succumb to its lack of compelling belief in its own free traditions. But, having put

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his priorities in order, Mr. Rusher thinks it useful to expose communist spy policies. He hopes his book will be read by the young with open minds. ◈

▸ THE JEWELER'S EYE—*A Book of Irresistible Political Reflections* by William F. Buckley, Jr. (New York: G. P. Putnam's Sons, 1968, 378 pp., $6.95)

Reviewed by Robert M. Thornton

YEARS AGO H. L. Mencken remarked on the need for a high Tory magazine written with good humor. In 1955 William F. Buckley, Jr. filled this need with his sprightly fortnightly, *National Review*. A dozen years later he and his merry band are still going strong—to the discomfort of the "liberals." Buckley invites comparison with "The Sage of Baltimore" because he, like Mencken, has a fine command of the English language, is devastating in his verbal assaults, and is never hesitant about needling the pompous or exposing frauds. That he enjoys the respect and even the friendship of people on the Left shows that he is able to attack the ideas he believes wrong without any personal animosity.

Buckley admits that he is no original thinker and he offers no serious tomes to undermine the intellectual foundations of "liberalism." Although highly learned, he does not try to fill the scholar's job. Rather, he has chosen to joust with the "enemy" on a day-by-day basis via television, public debates, letters, magazines, books, and newspapers. He steps gaily into the arena, seemingly unaware of the terrific odds against him. Although he may not always get the best of his opponents, he at least keeps them from "winning" by default. Buckley has helped to destroy the false image of the conservative as a stodgy Colonel Blimp. Agree with him or not, you won't find him dull. Being a conservative can be exciting!

The present book is an excellent collection of Buckley's observations on the current scene, but the subtitle is misleading. Besides his lively criticisms of the "liberals" and their nonsense, we have some excellent reportage. Here again, one is reminded of Mencken, never shy about voicing his opinions, yet capable of straight reporting in a crackling, lucid style. Closing out the book are several tributes to the deceased among public figures, friends, and family. Along with the memorials to Henry Luce, Herbert Hoover, and Douglas MacArthur, readers of THE FREEMAN will be happy to see Buckley's eulogy on Frank Chodorov who fought the good fight back when "liberals" were almost unopposed.

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